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Attorneys for Plaintiffs and the Proposed Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JERRY MITCHELL ADAIR, DAVID
AMBROZIC, PHILIP CAMACHO, DANIEL
KADYROV, LINDSEY LABELLA,
JEFFREY NYKERK, MICHAEL PAWSON,
STACEY RODGERS, and MARC
SCHAEFER on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

Hon. Eumi K. Lee

Case No. 5:24-cv-07588-EKL

1 Plaintiffs Jerry Mitchell Adair, David Ambrozic, Philip Camacho, Daniel Kadyrov, Lindsey
2 LaBella, Jeffrey Nykerk, Michael Pawson, Stacey Rodgers, and Marc Schaefer (“Plaintiffs”),
3 individually and on behalf of all others similarly situated, by and through counsel, hereby bring this action
4 against Apple Inc. (“Apple”), seeking relief due to the defective nature of their Apple AirPods Pro
5 Generation One Headphones (“AirPods Pro Gen 1”). Plaintiffs’ allegations herein are based upon
6 personal knowledge and belief as to their own acts and upon the investigation of their counsel, and
7 information and belief as to all other matters.

8 **NATURE OF THE CASE**

9 1. Apple admits that AirPods Pro Gen 1 have an audio defect that causes them to exhibit
10 crackling or static sounds, loss of bass sounds, or an increase in background sounds. These “sound
11 issues,” which Apple acknowledges on its own support page, are referred to herein as the “Audio Defect.”
12 *See* Exhibit 1 (<https://support.apple.com/AirPods-pro-service-program-sound-issues>).

13 2. Plaintiffs bring this case against Apple because Apple touted its AirPods Pro Gen 1’s
14 superior audio and noise-cancelling qualities and sold AirPods Pro Gen 1 to consumers nationwide even
15 though its AirPods Pro Gen 1 had a hidden Audio Defect.

16 3. Indeed, although numerous consumers started complaining to Apple soon after the release
17 of the AirPods Pro Gen 1 in October 2019—and even though Apple itself admitted to the defect in
18 October 2020 on an obscure support page—Apple continued to sell AirPods Pro Gen 1 with an Audio
19 Defect it knew about, but that was hidden from purchasers, for hundreds of dollars a pair until September
20 2022.

21 4. The functionality of audio components is a material and essential feature of any
22 headphones. Reasonable consumers expect that high-end, high-priced headphones like Apple’s AirPods
23 Pro Gen 1, which Apple advertised as having noise cancelling features and superior sound compared to
24 other headphones, would have consistently functioning, high-quality audio.

25 5. Reasonable consumers are not experts on the internal workings of audio components and
26 thus trusted that Apple sold them high-quality headphones, at a high price point, that would have
27 consistently functioning audio. Indeed, Apple made sure that consumers would continue to buy
28 headphones not knowing that they contained the Audio Defect.

1 6. Although Apple provided an ineffective “Service Program”—that just replaced defective
2 headphones with replacements that were also defective—and admitted the Audio Defect with respect to
3 a small subset of the total number of affected units, Apple concealed the sound issues it knew about from
4 consumers so it could continue to sell its AirPods Pro Gen 1 while it developed a AirPods Pro Gen 2.
5 Despite Apple vaguely acknowledging on a support page the defect in certain units, and providing a so-
6 called Service Program, Apple did not make any effort to publicize the problem—continuing instead to
7 sell headphones that Apple knew had a hidden defect.

8 7. Plaintiffs and many consumers like them have all experienced the same sound issues—
9 including crackling or static sounds, loss of bass sounds, or an increase in background sounds. When
10 consumers attempt to return the AirPods Pro Gen 1 for a replacement earbud under the Service Program,
11 Apple provides replacement earbuds that contain the exact same defect. Many consumers, including
12 Plaintiffs, have been through several pairs of AirPods Pro Gen 1 only to experience the same defect each
13 time. As a result, even the few consumers to whom Apple provides replacement under its Audio Defect
14 Service Program are caught in a vicious cycle: use, malfunction, replacement, repeat. And after the
15 Service Program-period has expired, consumers are left with a broken pair of expensive AirPods Pro Gen
16 1 headphones with no recourse.

17 8. Based on Apple’s representations about sound-quality and its omission of the truth about
18 the sound issues the AirPods Pro Gen 1 experience, Plaintiffs and other consumers like them purchased
19 Apple’s AirPods Gen 1 based on their reasonable belief that they would effectively transmit sound and
20 that they would not, instead, have “sound issues.” Reasonable consumers, including Plaintiffs, would not
21 have purchased Apple’s AirPods Pro Gen 1 had they known that Apple’s representations about audio
22 functionality and quality were false and misleading, and that the AirPods Pro Gen 1 contained an Audio
23 Defect that caused “sound issues” such as crackling, static, and interruption and loss of sound.

24 9. Plaintiffs and similarly situated Class Members bought defective AirPods Pro Gen 1
25 headphones at a premium price when they, in fact, have “sound issues” that make the headphones worth
26 less than what they paid for them. As a result of Apple’s false and misleading advertising, and sale of its
27 AirPods Pro Gen 1 with a hidden Audio Defect, Plaintiffs and the proposed Class have suffered damages.
28 Plaintiffs and similarly situated Class Members would not have purchased their AirPods Pro Gen 1 or

1 they would have paid less had they known that Apple's advertising was false and misleading, and that
2 the AirPods Pro Gen 1 contained an Audio Defect.

3 10. Accordingly, Plaintiffs bring this action, individually and on behalf of a nationwide class
4 of similarly situated owners of Apple's AirPods Pro Gen 1 headphones for violation of the consumer
5 protection law, express warranty law, and implied warranty law of the 50-states, or in the alternative, for
6 violation of the consumer protection law, as well as laws governing breach of express and implied
7 warranty of California, Florida, Illinois, New York, Ohio, Pennsylvania, and Texas Classes where
8 Plaintiffs reside.

9 **THE PARTIES**

10 11. Plaintiff Philip Camacho is a resident and citizen of Chatsworth, California. He has
11 resided in California since on or about August 2023.

12 12. Plaintiff Marc Schaefer is a resident and citizen of San Diego, California. At all times
13 relevant hereto, he has resided in California.

14 13. Plaintiff Jeffrey Nykerk is a resident and citizen of Jacksonville, Florida. At all times
15 relevant hereto, he has resided in Florida.

16 14. Plaintiff David Ambrozic is a resident and citizen of Chicago, Illinois. At all times relevant
17 hereto, he has resided in Illinois.

18 15. Plaintiff Jerry Mitchell Adair is a resident and citizen of Queens, New York. At all times
19 relevant hereto, he has resided in New York.

20 16. Plaintiff Daniel Kadyrov is a resident and citizen of Manhattan, New York. At all times
21 relevant hereto, he has resided in New York.

22 17. Plaintiff Stacey Rodgers is a resident and citizen of Painesville, Ohio. At all times relevant
23 hereto, she has resided in Ohio.

24 18. Plaintiff Lindsey LaBella is a resident and citizen of Allegheny County, Pennsylvania. At
25 all times relevant hereto, she has resided in Pennsylvania.

26 19. Plaintiff Michael Pawson is a resident and citizen of Harris County, Texas in the Houston
27 metro area. At all times relevant hereto, he has resided in Texas.

20. Defendant Apple Inc. is a corporation incorporated under the laws of the State of California. Apple's corporate headquarters and principal place of business are located in Cupertino (Santa Clara County), California. Accordingly, for jurisdictional purposes, Defendant Apple Inc. is a citizen of California.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of the individual class members exceed the sum or value of \$5,000,000.00, exclusive of interest and costs; there are more than 100 putative class members; and at least one putative class member is from a state different from Apple.

22. This Court has personal jurisdiction over Apple because it is incorporated under the laws of the State of California; its corporate headquarters and principal place of business are located in Cupertino (Santa Clara County), California; it conducts substantial business in this District; and a substantial part of the acts and omissions complained of occurred in this District.

23. Venue is proper in this judicial district under 28 U.S.C § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this District. Apple has its principal place of business in this District; it is authorized to conduct business in this District; it has intentionally availed itself of the laws and markets within this District; it does substantial business in this District; and it is subject to personal jurisdiction in this District.

COMMON CLASS ALLEGATIONS

A. Apple Touted the Audio Quality of Its AirPods Pro Gen 1

24. Apple announced its AirPods Pro Gen 1 on October 28, 2019, and released them on October 30, 2019. Apple continued to sell AirPods Pro Gen 1 until September 7, 2022.

25. From its first press release announcing AirPods Pro Gen 1, on October 28, 2019, Apple touted the first generation AirPods Pro Gen 1's noise cancelling features, superior, clear sound, and high audio quality.¹ Apple also highlighted that the design of the first generation AirPods Pro Gen 1 had superior audio capabilities compared to other headphones by providing a "superior noise-canceling

¹ Apple AirPods Pro Gen 1 Press Release, posted October 28, 2019, available here: <https://perma.cc/3G3B-B4TV> (last visited Oct. 1, 2024).

1 experience,” through the combination of two microphones and “advanced software” that was supposed
2 to remove unwanted background noise.²

3 26. An advertisement also released on October 28, 2019 similarly emphasized Apple’s
4 AirPods Pro Gen 1 audio capabilities—claiming that the AirPods Pro Gen 1 offered consumers “superior
5 sound quality” with “pure, incredibly clear sound” that “cuts out the noise” for an “immersive noise-
6 canceling experience,” and overall “rich, immersive listening experience.”³ Apple further promised a
7 superior audio experience compared to its competition—representing that the AirPods Pro Gen 1 were
8 “the only in-ear headphones with Active Noise Cancellation that continuously adapts to the geometry of
9 your ear and the fit of your ear tips – blocking out the world so you can focus on what you are listening
10 to.”⁴ In promoting its Transparency mode, which is still supposed to cancel “internal” noise with an
11 inward facing microphone, Apple claimed that its AirPods Pro “let[] outside sound in, and allow[ed]
12 things to sound and feel natural when you’re talking to people nearby.”⁵ In other words, Apple promised
13 that both modes would block unwanted sound produced internally, externally or both, and produce clear,
14 high quality sound for their users.

15 27. Apple also released numerous television commercial advertisements that sought to
16 promote the noise cancelling features of the AirPods Pro Gen 1. For example, in one such commercial, a
17 woman can be seen walking along a busy city street, with the constant buzz of people, cars, and other
18 noises in the background until she activates the noise cancellation features of her AirPods Pro Gen 1, at
19 which point she is depicted as though she is dancing down a deserted street, with no background noise at
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25 ² *Id.*

26 ³ *Id.*

27 ⁴ Apple AirPods Pro Gen 1 web advertisement, posted October 28, 2019, available here:
<https://perma.cc/SQG3-PZCU> (last visited Oct. 1, 2024).

28 ⁵ Apple AirPods Pro Gen 1 web advertisement, posted October 28, 2019, available here:
<https://perma.cc/SQG3-PZCU> (last visited Oct. 1, 2024).

all.⁶ Similar ads were run showing other individuals in busy streets, who began dancing as soon as they turned on their AirPods Pro Gen 1 and were able to eliminate background street noise.⁷

28. Immediately following Apple’s announcement of the first generation AirPods Pro Gen 1 and beginning on or about October 28, 2019, Apple continued to make these consistent representations in print ads, television ads, on shelves at point of sale, on its website, and on third-party websites like BestBuy,⁸ Target,⁹ and Amazon¹⁰ until at least September 7, 2022—when Apple announced AirPods Pro Gen 1’s successor, the second generation of AirPods Pro¹¹.

29. Apple’s retailers, like Target, Amazon, and BestBuy, displayed language at the point of sale and on its own websites¹² that was provided by Apple and in material respects identical to the language advertising AirPods Pro Gen 1 on Apple’s website. For example, Apple instructed its retailers to advertise the AirPods Pro Gen 1 as capable of providing “active noise cancellation for immersive sound,” and that it had “transparency mode for hearing what’s happening around you.”¹³

⁶ Apple: AirPods Pro Snap; <https://www.youtube.com/watch?v=DpcXUXtZ4CU> (posted Apr. 3, 2020) (last visited Oct. 4, 2024).

⁷ See, e.g., Apple AirPods Pro TV Spot, ‘Jump’ Song by Young Franco, available here: https://www.ispot.tv/ad/OVi_/apple-AirPods-pro-jump-song-by-young-franco (posted Mar. 14, 2021) (last visited Oct. 4, 2024); AirPods Pro Commercial, available here: <https://www.youtube.com/watch?v=C4AOtoidPPk> (posted Mar. 5, 2023) (last visited Oct. 4, 2024).

⁸ See *BestBuy’s website*: “Active noise cancellation for immersive sound” and “Transparency mode for hearing and connecting with the world around you,” as of November 4, 2019, available here: <https://perma.cc/28NK-35NK>.

⁹ *Target’s website*: “Active noise cancellation for immersive sound” and “Transparency mode for hearing and connecting with the world around you,” as of March 5, 2020, available here: <https://perma.cc/A2NV-A7R8>.

¹⁰ See, e.g., *Amazon’s website*: “Active Noise Cancellation blocks outside noise, so you can immerse yourself in music” and “Transparency mode for hearing and interacting with the world around you,” as of February 4, 2022, available here: <https://perma.cc/W2KF-723V>; see also *Amazon’s website* at <https://perma.cc/L8XA-Q37T> (last visited October 25, 2024).

¹¹ “Apple announces the next generation of AirPods Pro,” available here: <https://perma.cc/83YC-LACV> (posted Sept. 7, 2022) (last visited Oct. 4, 2024).

¹² Apple AirPods Pro Gen 1 web advertisement, posted October 28, 2019, available here: <https://perma.cc/SQG3-PZCU> (last visited Oct. 1, 2024); see also *supra* n. 8 (Best Buy), n. 9 (Target), n. 10 (Amazon).

¹³ Apple AirPods Pro Gen 1 Press Release, posted October 28, 2019, available here: <https://perma.cc/3G3B-B4TV> (last visited Oct. 1, 2024).

30. At the same time that Apple represented that its AirPods Pro Gen 1 headphones had high quality sound, Apple never disclosed that the AirPods Pro Gen 1 had a sound defect such that they could experience crackling or static sounds, loss of bass sounds, or an increase in background sounds—except for on an obscure support page that understated the defect, and that had to be actively found through research by consumers. Even worse, the support page and Apple’s Service Program (i) minimized the Audio Defect and its true extent by understating the number of affected units, and (ii) gave consumers the run-around as Apple replaced their defective headphones with more headphones containing the same hidden Audio Defect. First, with its unpublicized Service Program, Apple affirmatively misled those consumers who somehow discovered or accessed the Service Program into the false belief that Apple would fix the problem or that their headphones did not contain the Audio Defect identified. Second, for other consumers who did not fall within the Service Program’s arbitrary time cut-off, Apple misled consumers into the false belief that there was not an actual Audio Defect with their headphones and that Apple was not aware of one.

B. Apple Admits That AirPods Pro Gen 1 Had an Audio Defect

31. Although Apple promised that its AirPods Pro Gen 1 had superior audio quality and noise cancelling features, in October 2020, on an obscure support page buried online, Apple admitted that its AirPods Pro Gen 1 headphones contained an Audio Defect associated with “sound issues,” including crackling, static, and interruption and loss of sound.¹⁴

32. Specifically, Apple admitted that “AirPods Pro may experience sound issues” where AirPods Pro “may exhibit one or more of the following behaviors:

- Crackling or static sounds that increase in loud environments, with exercise or while talking on the phone;
- Active Noise Cancellation not working as expected, such as a loss of bass sound, or an increase in background sounds, such as street or airplane noise.”

33. Apple first admitted to these sound issues when it published a support page, “AirPods Pro Service Program for Sound Issues”—stating that it would replace earbuds manufactured before October 2020 with a confirmed issue, if a user succeeded in following Apple’s process for obtaining a

¹⁴ “AirPods Pro Service Program for Sound Issues,” posted Oct. 30, 2020, available here: <https://perma.cc/KXJ3-GGTH> (information available as of Sep. 1, 2021) (last visited Oct. 7, 2024).

1 replacement. The problem for Apple is that the replacement set of AirPods Pro Gen 1 contained the same
 2 Audio Defect. In other words, those users simply received another defective set of AirPods Pro Gen 1,
 3 worth less than consumers paid for them, with many users later experiencing the Audio Defect with the
 4 defective replacement set as well.¹⁵

5 34. When Apple originally launched its Service Program on October 30, 2020, the “program
 6 cover[ed] affected AirPods Pro for 2 years after the first retail sale of the unit[,]” with Apple specifically
 7 agreeing to replace affected earbuds until October 31, 2021. Then, just two weeks shy of this 2-year mark,
 8 Apple updated its Service Program to “cover[] affected AirPods Pro [*i.e.* those made before October 30,
 9 2020] for 3 years after the first retail sale of unit[,]” in other words, for an additional year, through October
 10 31, 2022.¹⁶

11 35. While Apple buried this admission on a support page that users would have had to search
 12 out and pursue, Apple never made any effort to notify AirPods Pro Gen 1 purchasers, and entirely omitted
 13 the Audio Defect at the point of sale—leading reasonable consumers to believe that the high-end
 14 expensive headphones they purchased would not experience crackling or static sounds, loss of bass
 15 sounds, or an increase in background sounds. For example, Apple never pushed out this Service Program
 16 to its users through their cell phones, website accounts, or other apps, which it could have done. Instead,
 17 it continued to sell AirPods Pro Gen 1 headphones to unwary consumers who could not have reasonably
 18 known that the high end, expensive headphones that they were buying could experience crackling or
 19 static sounds, loss of bass sounds, or an increase in background sounds.

20 **C. The Audio Defect Inherent in AirPods Pro Gen 1 Persisted after October 2020**

21 36. Further hiding the Audio Defect it knew about from consumers, on its obscure support
 22 page, Apple understates the extent of the defect by only admitting to the Audio Defect in units
 23
 24

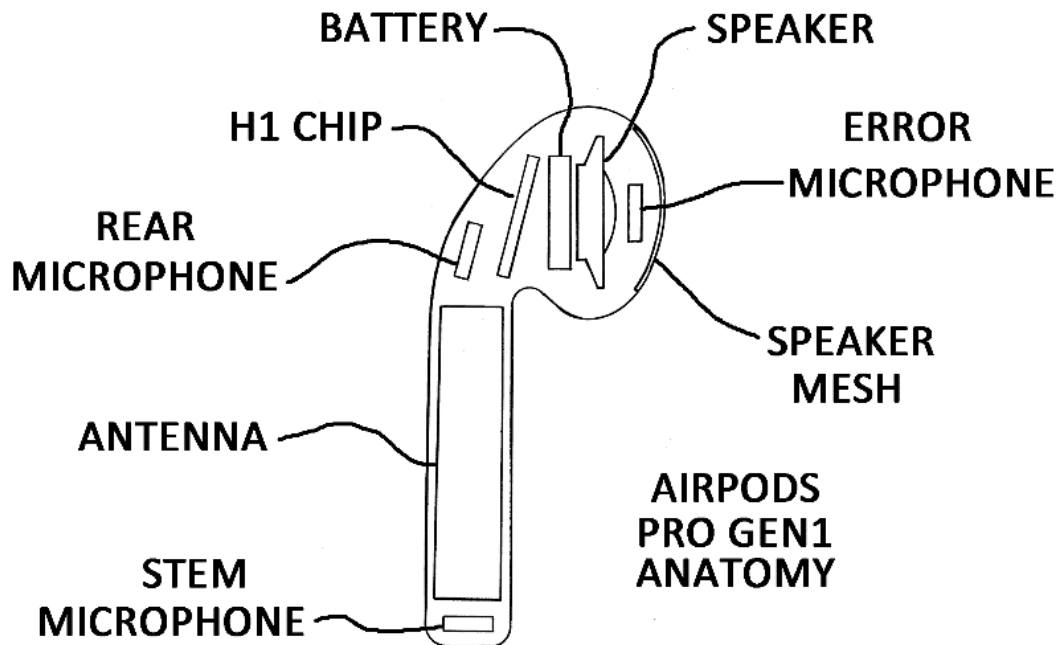
25 ¹⁵ See, e.g., “Apple Quietly Extends AirPods Pro Repair Program That Addresses Crackling/Static.”
 26 MacRumors.com News Discussion Board containing multiple posts about replacement AirPods
 27 experiencing same crackling issues, available here: <https://perma.cc/M9KK-LYQ9/> (posted Oct. 13, 2021)
 (last visited Oct. 7, 2024).

28 ¹⁶ Compare “AirPods Pro Service Program for Sound Issues,” posted Oct. 30, 2020, available here:
<https://perma.cc/KXJ3-GGTH> (information available as of Sep. 1, 2021) (last visited Oct. 7, 2024) with
 Exhibit 1.

1 manufactured before October 2020. Plaintiffs' investigation, however, confirms that all AirPods Pro Gen
2 1 have the Audio Defect—regardless of manufacture date.

3 37. A microscopic examination of AirPods Pro Gen 1 sold before and after October 2020
4 reveals that there are no significant component differences between AirPods Pro Gen 1 before and after
5 October 2020. *See, e.g.*, Exhibit 2 (Appendix A, B, C (depicting microscopic comparisons showing same
6 material components)). Such an examination could not reasonably be conducted by consumers with no
7 expertise in the components of headphones to discover the Audio Defect hidden by Apple.

8 38. A general schematic of the material components of all AirPods Pro Gen 1 appears as
9 follows:



21
22 39. Plaintiffs' investigation, which required consultation from an expert and could not have
23 reasonably been discovered by the average consumer, further reveals that, while Apple briefly
24 experimented with a possible quick fix—by replacing the MEMs microphones after the October 2020
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1 date before reverting to the original MEMs microphones—Apple’s attempt at a quick fix had no impact
2 on the Audio Defect.¹⁷

3 40. Plaintiffs’ investigation corroborates that all AirPods Pro Gen 1 have the same material
4 components and same Audio Defect regardless of manufacture date. For instance, Plaintiffs’ investigation
5 shows that multiple units sold after October 2020 manifested the Audio Defect and failed Apple’s sound
6 test—thus corroborating user complaints and suggesting that *all* AirPods Pro Gen 1 contain an Audio
7 Defect regardless of whether they were manufactured before or after October 2020.

8 41. The fact that the Audio Defect persisted in units after October 2020 is thus corroborated
9 by (*inter alia*) (i) the fact that the major component parts did not change (save a nonmaterial, temporary
10 switch of the MEMs microphone that made no difference); (ii) the consistent failures of Apple’s sound
11 test for units manufactured after October 2020, including those documented as part of Plaintiffs’
12 investigation; (iii) the continued reports by users experiencing the same sound issues well after the
13 October 2020 date identified by Apple (*see infra* § E); and (iv) the redesign of all audio component parts
14 in the second generation of AirPods Pro (*see infra* § D).

15 42. Accordingly, although Apple failed to acknowledge the defect in post-October 2020
16 devices—while continuing to sell its AirPods Pro Gen 1 at the same time, and for the same price as it
17 was developing its second generation of AirPods Pro in an attempt to address AirPods Pro Gen 1’s
18 inherent Audio Defect—AirPods Pro Gen 1 headphones sold after October 2020 still contained the Audio
19 Defect.

22 ¹⁷ Plaintiffs’ investigation suggests that Apple predominately utilized the Goertek model GWM1
23 microphone post October 2020 but experimented with a microphone that had a different frequency
24 response and/or different SNR (“Sound to Noise Ratio”) to see if there might be an easy fix for the
25 problems with AirPods Pro Gen 1’s noise cancelling features before reverting to the originally used
26 Goertek model GWM1 microphone. For example, Appendix D (*see* Ex. 2), depicts microphotos of the
27 MEMS microphone models used in four disassembled AirPods Pro Gen 1s sold after October 2020, which
28 shows that Apple utilized the Goertek model GWM1 microphone in all but one of the 4 disassembled
devices. During disassembly and microphotographic examination of these units, the other major
components were observed to have no visual differences from the pre-October 2020 models of the AirPods
Pro Gen 1. *See* Exhibit 2 (Appendix B (comparing microphones in four defective samples sold between
November 2020 and February 2022)). As shown by the continued failure of devices after the October
2020 time frame discussed herein, Apple’s attempt at a “quick fix” by switching the MEMS microphone
did not materially improve the Audio Defect.

43. The AirPods Pro Gen 1 were thus not worth the premium price that consumers paid for them—as they contained a hidden Audio Defect and thus could experience crackling or static sounds, loss of bass sounds, or an increase in background sounds.

D. The Audio Defect Inherent in AirPods Pro Gen 1 Precipitated the Development of the AirPods Pro Gen 2

44. Although there are no significant changes in the material components among all AirPods Pro Gen 1 headphones, microscopic examination confirms that the material audio components were redesigned in the AirPods Pro Gen 2 units released to replace Apple’s AirPods Pro Gen 1. Specifically, the DSP processor, the rear facing microphone, and the error microphone were all redesigned. *See Exhibit 2 (Appendix E).*¹⁸

45. In particular, Apple appears to have attempted to solve the AirPods Pro Gen 1’s Audio Defect in the redesign of AirPods Pro Gen 2 by (i) increasing the processing speed of the DSP processor (responsible for noise cancelling or decreasing background ambient noise), and by, at some point during its sale of AirPods Pro Gen 2 (ii) redesigning the speakers to add angular striations along its periphery to improve low frequency (base tone) response.

46. Apple developed AirPods Pro Gen 2 with increased processing speed because the noise cancelling circuitry of the DSP processor in the AirPods Pro Gen 1 was too slow to reject abrupt noises and may have created white noise.

47. In that regard, although Apple claimed on its website that its AirPods Pro Gen 1 models had noise cancelling adjusted at 200 times per second, Apple touts its AirPods Pro Gen 2 models as having an improved processor chip called the H2 which facilitated “2x more Active Noise Cancellation.”¹⁹

48. In other words, because the speed of the DSP processor likely contributed to the Audio Defect in the AirPods Pro Gen 1, Apple seems to have decided to develop a significantly faster DSP processor in the AirPods Pro Gen 2. Apple’s apparent awareness that the DSP processing speed

¹⁸ The MEMS speaker is also different from any MEMS speaker used in AirPods Pro Gen 1—likely a change to accommodate AirPods Pro Gen 2’s faster DSP processing speed.

¹⁹ <https://perma.cc/9MXY-L4M4> (last visited Oct. 4, 2024); *see also* <https://perma.cc/34YP-5W6E> (last visited Oct. 23, 2024); <https://perma.cc/LHG6-CT5F> (last visited Oct. 23, 2024).

1 contributed to the Audio Defect in AirPods Pro Gen 1 is further corroborated by its telling instruction to
2 third parties to disable ANC functionality in AirPods Pro Gen 1 when encountering noise issues.

3 49. If a DSP processor is too slow, as it was in the AirPods Pro Gen 1, it can generate white
4 noise as it attempts to cancel out background noise, which gets amplified by AirPods Pro Gen 1's "error
5 microphone."²⁰ The result is "white noise"²¹ and/or "feedback noise."²²

6 50. Additionally, to attempt to fix the problem with feedback, Apple also added angular
7 striations around the periphery of the AirPods Pro Gen 2 speaker diaphragm to improve low frequency
8 base tone response—as the largest vibration excursions in speaker diaphragms are caused by the lowest
9 frequency base tones.

10 51. In short, rather than attempt fix the problem with AirPods Pro Gen 1, Apple abandoned
11 AirPods Pro Gen 1 and the sound issues it knew the headphones had, but could not figure how to solve
12 by, instead, experimenting with improvements aimed at fixing the problem in a new generation.

16 ²⁰ SoundSightr, "5 Reasons Why Active Noise Cancelling is Bad (Read This Before Buying)," posted
17 Mar. 26, 2022, available here: <https://perma.cc/LHG6-CT5F> (last visited Oct. 4, 2024).

18 ²¹ White noise is generated by the ANC circuitry and multiple microphones on the outside and inside of
19 the headphones in their effort to cancel a wide range of frequency sounds out. Due to the slower DSP
20 processing AirPods Pro Gen 1, and the unpredictable and changing nature of ambient noise, the ANC
21 circuitry could not reproduce a cancelling anti-noise in time causing white noise. *See* SoundSight Journal,
22 "5 Reasons Why Active Noise Cancelling is Bad (Read This Before Buying)," March 26, 2022 (available
here: <https://perma.cc/LHG6-CT5F> (last visited Oct. 4, 2024)) ("Noise-cancelling can generate white
noise. Hybrid ANC headsets have a problem called 'white noise,' which is the combination of all audible
frequencies equally. This is not a loud high-pitched sound, but a noise generated by the ANC circuitry and
multiple microphones on the outside and inside in their effort to cancel a wide range of frequencies.").

23 ²² Feedback noise is also generated by the additional "error microphone" that is in front of AirPods Pro
24 Gen 1's speaker to give the DSP processor a second chance to detect an error in its first pass at cancelling
25 ambient noise—this speaker may perceive some parts of music or voice audio as ambient noise and
26 attempt to attenuate the sound that belong to the music—resulting in an audible noise that the microphone
27 and DSP processor try and cancel out again in a feedback loop. *See* SoundSightr Journal, "5 Reasons Why
28 Active Noise Cancelling is Bad (Read This Before Buying)," March 26, 2022 (available here:
<https://perma.cc/LHG6-CT5F> (last visited Oct. 4, 2024)) ("Feedback noise—Recursive capture of noise
by an internal microphone. Feedback noise is present in headphones with Feedback and Hybrid
technologies. Unlike Feedforward headphones, these two types of headphones have an additional internal
microphone in front of the speakers to pick up sounds behind the ear cups. Because of these design flaws,
some parts of your music may be perceived as noise, which interferes with the user's listening
experience.").

E. Apple Has Long Been Aware of Consumers' Complaints About the Audio Defect

52. Plaintiffs' experiences with sound issues in the AirPods Pro Gen 1 headphones are by no means isolated occurrences. Since soon after the release of AirPods Pro Gen 1 in October 2019, owners of AirPods Pro Gen 1 have complained on Apple's own website regarding the Audio Defect. Indeed, the internet is replete with examples of blogs and other websites where consumers have complained of the exact same Audio Defect with their AirPods Pro Gen 1, irrespective of whether they were manufactured before or after Apple's arbitrary October 2020 cutoff.

53. The following are just a few examples of the numerous user complaints reporting the sound issues Apple itself has acknowledged:

- "The left AirPods makes a loud static wind-like sound whenever I use the passthrough mode or the noise cancelling mode . . . I tried re-pairing it. I tried a different iPhone. Im on the latest iOS. Nothing got it working." (posted October 30, 2019).²³
- "... [Apple] agreed to replace one of the AirPods (the one making the noise) but insisted that if it happens again, that's 'normal behaviour.'" (response posted January 10, 2020).²⁴
- "In my left AirPods while I had the Noise cancelling or Transparency mode on I hear a crackling noise. They are only a couple weeks old. When I play audio there is static noise I hear also when people are speaking." (posted April 20, 2020).²⁵
- My right AirPods Pro has recently started making this noise where it kind of sounds like someones blowing on a microphone in transparency or noise cancelling mode. I've tried resetting them but this did nothing to fix them. The sound happens at all times whether I have music playing or not. If anyone could help it would be very appreciated. (posted January 18, 2021).²⁶

²³ "Broken AirPods pro. Static noise." Reddit thread available here: <https://perma.cc/UYZ3-DX89> (posted Oct. 30, 2019) (last visited Oct. 7, 2024).

²⁴ "Broken AirPods pro. Static noise." Reddit thread available here: <https://perma.cc/UYZ3-DX89> (posted Oct. 30, 2019) (response posted Jan. 10, 2020) (last visited Oct. 7, 2024).

²⁵ "AirPod Pros Crackling while in Noise cancelling and Transparency mode?" Apple Discussion Board available here: <https://perma.cc/T4QM-7GVH> (posted Apr. 20, 2020) (last visited Oct. 7, 2024).

²⁶ "AirPod crackling noise." Reddit thread available here: <https://perma.cc/4T3T-ZCUK> (posted Jan. 18, 2021) (last visited Oct. 7, 2024)

54. Based upon these consumer complaints, many of which were made directly to Apple, including on its own website, Apple had knowledge of, or should have had knowledge of, the Audio Defect in the AirPods Pro Gen 1 by the end of October 2019, if not earlier, but in all events long before Apple admitted the sound issues with its AirPods Pro Gen 1 in October 2020 in connection with its so-called Service Program.

55. In fact, in May 2020, Apple posted support documents on its website for troubleshooting audio issues and had in some instances replaced defective earbuds, albeit with another Apple AirPods Pro Gen 1 earbud that contained the same inherent Audio Defect Apple later admitted was known to cause sound issues. These two actions show that Apple was aware of the Audio Defect, but continued to market and sell first generation AirPods Pro as if they were not defective.²⁷

56. Later, in October 2020, Apple admitted on a support page that its AirPods Pros Gen 1 contained an Audio Defect associated with crackling, static, and interruption and loss of sound and claimed that the company would replace qualifying earbuds.²⁸ Those replacements, however, had the exact same Audio Defect that all Apple AirPods Pro Gen 1 have—including those manufactured after October 2020 when Apple admitted the defect.²⁹

57. Indeed, consumer complaints continued with respect to AirPods Pro Gen 1 units sold after October 2020 and continue to be posted directly to Apple's website to this day. For example, on Apple's Community forum, one user posted that Apple had identified the sound issue in her device but told her she did not qualify for replacement based on the date her device was manufactured:

Recently my AirPods Pro starting having crackling noises with noise cancellation mode and relatively loud surrounding noises. After reading online that it's a known issue for those manufactured prior to October 2020, I took them to the Apple store. A sound test was performed, and they both failed. Was informed that my AirPods are doing the same thing,

²⁷ See Apple Support Page, "AirPods Pro Service Program for Sound Issues," published October 30, 2020; available through the Wayback Machine here: <https://perma.cc/KXJ3-GGTH> (last visited September 3, 2024).

²⁸ "AirPods Pro Service Program for Sound Issues." ("Information as of 2020-10-30"). <https://perma.cc/KXJ3-GGTH> (last visited Oct. 7, 2024).

²⁹ "Apple Quietly Extends AirPods Pro Repair Program That Addresses Crackling/Static." MacRumors.com News Discussion Board containing multiple posts about replacement AirPods experiencing same crackling issues, available here: <https://perma.cc/M9KK-LYQ9/> (posted Oct. 13, 2021) (last visited Oct. 7, 2024).

1 but they were manufactured about one month after October 2020. This has been extremely
 2 frustrating given that they are doing the same thing, but they were manufactured outside
 the “recognized timeframe”.

3 Thoughts on next steps? We have been loyal Apple customers for decades, but we will not
 4 purchase anymore products unless this gets resolved. Thanks in advance for any assistance.
 (Posted May 11, 2022).³⁰

5 58. Other users similarly complained, on Apple’s website and on other forums, that Apple
 6 AirPods Pro Gen 1 manifested the sound issues caused by the Audio Defect even though manufactured
 7 after October 2020:

- 8 ■ “My 1st Gen AirPods Pros have the exact same issue as the Service Program describes.
 9 However, when I talked with Apple Support they said that since mine were made in Q1 2021
 10 they’re not eligible for replacement. It definitely seems like the manufacturing problem went
 11 past October 2020, but Apple is insistent that the problem was fixed (even though myself and
 12 others I’ve seen here and on Reddit with post Oct 2020 units are having the same issue).”
 13 (posted October 4, 2022).³¹
- 14 ■ “Hey everyone, I’m having issues with my gen 1 AirPods Pro. They are the textbook
 15 definition of the hardware defect covered by Apple’s ‘AirPods Pro Service Program for Sound
 16 Issues’. They have a crackle/static noise that is constant when in transparency or noise
 17 cancelation mode and I’ve tried every ‘fix.’ Today, after multiple support tickets I had
 18 someone finally confirm that my AirPods were manufactured over a year after the 8/20 [sic]
 19 cutoff for the extended warranty program. Is there any way at all that I can get my AirPods
 20 fixed/replaced under warranty? I have heard, and was confirmed by Apple support, that people
 21 are still experiencing this hardware defect past Apples cutoff date. I really do not want to give
 22 any more money to Apple to fix or replace these AirPods as I’ve had a horrible experience
 23 with factory hardware defects on Apple devices this year, so if there’s anything else I can do
 24 please let me know. ps. Apple, you REALLY need to review your program for gen 1 AirPods
 25

26
 27 ³⁰ “AirPod Pros crackling noise.” Apple Discussion Board available here: <https://perma.cc/3RYU-Q2KH>
 (posted May 11, 2022) (last viewed Oct. 4, 2024).

28 ³¹ “AirPods Pro Service Program - beyond Oct 2020.” Apple Discussion Board available here:
<https://perma.cc/D6PG-KG4B> (posted Oct. 4, 2022) (last viewed Oct. 4, 2024).

Pro as they obviously had manufacture defects past October of 2020.” (posted June 12, 2023).³²

- “My Gen 1 AirPods Pros have the dreaded crackling sound in the right earbud when I move around. I saw the Apple support page about replacements for this issue and made an Apple Store appointment. They did diagnostics and said that the right earbud failed. However, I guess I don’t qualify for the program since my AirPods were manufactured in 2021 (limit is Oct 2020). Also, my warranty recently expired. My only option was to buy a replacement earbud for \$89. They told me to call apple support and see if they could do something different. But the support line told me the same thing. Welp that sucks. I hope they expand the service program at some point. No way I’m buying AirPods Pro Gen 2, heard those are facing the same issue. Guess I’m just venting here, but does anyone have a recommendation for what I should do? The crackling sound is mildly infuriating while running.” (posted November 10, 2022)³³
- “One of my AirPods has started cracking/having static with any sound/movement. I know this is a known issue in AirPods produced before October 2020 and those are eligible for replacement. Mine were manufactured March 2021 and I bought them October 2021 and I would say they’ve been treated lightly in that time but is nearly unusable after only 1.5 years which seems ridiculous. Apple “genius” could only offer replacement for \$90. Wondering if anyone else had experienced this or if I should have only expected them to last less than 2 years... thanks!” (posted March 27, 2023).³⁴
- “I have the same issue. Went to Apple they checked them and found out both AirPods have their mistake which makes this crackling, told me they can’t fix them bc the manufacturing

³² “AirPods pro gen 1 extended warranty.” Apple Discussion Board available here: <https://perma.cc/C97W-SES8> (posted Jun. 12, 2023) (last visited on Oct. 4, 2024)

³³“ AirPods Pro (Gen 1) Crackling Issue In Right Earbud - Apple Will Not Replace.” Reddit thread available here: <https://perma.cc/2GZW-NE35> (posted Nov. 10, 2022) (last visited Oct. 4, 2024).

³⁴“Crackling in AirPods made after October 2020.” Reddit thread available here: <https://perma.cc/GTU7-LQE7> (posted Mar. 27, 2023) (last visited Oct. 4, 2024).

date is a week off from their “recall” even though the same issue is present.” (posted April 1, 2023).³⁵

- “Yes. My son’s had this exact problem and were manufactured after the cutoff. It’s complete BS that the crackling issue was fixed. I got the same story from the Apple Store associate. I love the AirPods Pros, but it’s clear there was a design flaw well beyond the date acknowledged by Apple. Usually Apple backs their products, but this was a case where they really let me down.” (posted March 27, 2023).³⁶

59. Notwithstanding the above, Apple has not broadened its (albeit ineffective) Service Program to cover units manufactured after October 2020 even though, *inter alia*, (a) users continued to report on Apple’s discussion boards into 2024 the same Audio Defect with AirPods Pro Gen 1 manufactured after October 2020;³⁷ (b) Apple representatives are continuing to perform sound tests at Apple stores and to confirm that such AirPods Pro Gen 1 have the Audio Defect;³⁸ (c) Apple itself acknowledged on a Support Page as recently as March 2024 that users of AirPods Pro Gen 1 may *still* be experiencing the crackling or static sounds.³⁹

60. Despite users’ complaints on Apple’s website, Apple has also not extended its Service Program to apply to consumers whose AirPods Pro Gen 1s were manufactured prior to October 2020, but for whom the Audio Defect manifested after the 3-year period. For example, this user—in response to dozens of other users complaining that their AirPods Pro Gen 1s manufactured after October 2020 failed and Apple refused to replace them—complained:

³⁵ “Crackling in AirPods made after October 2020.” Reddit thread available here: <https://perma.cc/GTU7-LQE7> (response posted Apr. 1, 2023; edited Apr. 3, 2023) (last visited Oct. 4, 2024).

³⁶ “Crackling in AirPods made after October 2020.” Reddit thread available here: <https://perma.cc/GTU7-LQE7> (response posted Mar. 27, 2023) (last visited Oct. 4, 2024).

³⁷ “My AirPods Pro (1st generation) make crackling, buzzing or static sounds.” Apple Discussion Board available here: <https://perma.cc/T5AB-8G2G> (posted Aug. 25, 2023, most recent post Jul. 30, 2024) (last visited Oct. 4, 2024).

³⁸ See *supra*, ¶¶92, ¶94, ¶107, ¶109, ¶¶110-111, ¶125, ¶139, ¶154, ¶157, ¶170, ¶¶179-180, ¶189 and ¶205 (Plaintiff Factual Allegations: Camacho – testing August 2022, November 2024; Schaefer – June 2021, April 2023, October 2024; Nykerk – December 2024; Ambrozic – February 2023; Adair – November 2022, November 2024; Kadyrov – December 2024; Rodgers – November 2023; LaBella – May 2024; Pawson – December 2023).

³⁹ “If your AirPods Pro (1st generation) make crackling or static sounds.” Apple Support page available here: <https://perma.cc/7GYK-FZU7> (posted Mar. 1, 2024) (last visited Oct. 4, 2024).

1 I go and am told yes the left one is broken, the right one also failed. My serial number IS
 2 in the recall, but it was passed the 3 years. It has been broken for more than a year, but I
 3 just put them away because I had no idea about the recall. You want to tell me apple doesn't
 4 know how to send out a message to let us know??? (posted July 30, 2024).⁴⁰

5 61. Indeed, although Apple knew shortly after launch that its AirPods Pro contained an Audio
 6 Defect, Apple elected to omit this from its continued advertisements and promotional materials, while
 7 affirmatively misrepresenting the benefits and superior sound quality of the AirPods Pro, including their
 8 noise cancelling features.

9 62. Even following Apple's own admission that its AirPods Pro Gen 1 suffered from an Audio
 10 Defect, Apple failed to notify consumers who had purchased the admittedly defective headphones. Rather
 11 than notify purchasers through the same channels where it was affirmatively advertising its
 12 misrepresentations of the benefits and superior sound quality of the AirPods Pro Gen 1, including their
 13 noise cancelling features, or pushing out information on its Support app linked to the devices,⁴¹ Apple
 14 merely posted a browser support page on its website in October 2020, which users would not find unless
 15 they looked for it specifically.⁴²

16 63. Apple's conduct in this respect constituted active and intentional concealment and
 17 minimization of the Audio Defect, which was material to Plaintiffs' and Class Members' decision to
 18

19 ⁴⁰ "My AirPods Pro (1st generation) make crackling, buzzing or static sounds." Apple Discussion Board
 20 available here: <https://perma.cc/T5AB-8G2G> (Discussion Board posted Aug. 25, 2023) (response posted
 21 Jul. 30, 2024) (last visited Oct. 7, 2024).

22 ⁴¹ Through Apple's "Support App" which users could access from their Apple iPhone, iPad, and computer,
 23 users could view support information for each of their paired Apple devices. For example, by clicking on
 24 their "AirPods Pro" device from the Support app, users could see information about their AirPods Pro
 25 Gen 1 "Audio & Sound," "Lost or Missing AirPods," "Pairing & Connectivity," the model, serial number,
 26 and "Coverage Info." Although users were able to retrieve an abundance of information about their devices
 27 from Apple's Support app, Apple never notified its users through the Support app or otherwise that it had
 28 identified an Audio Defect that caused the AirPods Pro Gen 1 to produce static sound and poor-quality
 audio or that it had implemented a Service Program (albeit ineffective) regarding the Audio Defect.

⁴² Notably, Apple also did not announce the 1-year extension of its Service Program, but merely updated
 the text on its support page stating that "[t]he program covers affected AirPods Pro for 3 years after the
 first retail sale of the unit[.]" whereas previously it stated the program lasted for 2 years. *See, e.g.*, "PSA:
 Apple silently extended the AirPods Pro Service Program for an additional year, now covering AirPods
 that crackle for 3 years in total after first sale." Reddit thread available here: <https://perma.cc/852E-CKE7>
 (posted Oct. 13, 2021) (last visited Oct. 7, 2024); *see* "AirPods Pro Service Program for Sound Issues,"
 posted Oct. 30, 2020, available here: <https://perma.cc/KXJ3-GGTH> (information available as of Oct. 30,
 2020) (last visited Oct. 7, 2024).

1 purchase their AirPods Pros and had the effect of discouraging and delaying Plaintiffs and Class Members
2 from pursuing the relief sought herein.

3 64. As a result of Apple's active concealment of the Audio Defect and/or failure to inform
4 Plaintiffs and Class Members of the same, any delay on the part of Plaintiffs and Class Members in filing
5 their causes of action cannot reasonably be attributable to lack of diligence on their part.

6 **F. Reasonable Consumers Could Not Have Discovered the Hidden Sound Defect in Apple**
7 **Airpods Gen 1**

8 65. Although Apple knew of the hidden Audio Defect, Plaintiffs could not have reasonably
9 discovered it. Apple omitted any mention of the Audio Defect in all of its advertising and at the point of
10 sale.

11 66. Although Plaintiffs and class members experienced sound issues with their particular
12 headphones, and sometimes were able to obtain replacements with the same hidden Audio Defect, they
13 could not have reasonably known that the defect was fundamental to Apple's AirPods Pro Gen 1.

14 67. The inherent defect in AirPods Pro Gen 1 could not have been discovered by Plaintiffs
15 simply because their individual headphones began to malfunction. Indeed, it took several months of
16 investigation, and microscopic inspection of several units of the headphones to determine that the defect
17 was inherent to all of the AirPods Pro Gen 1 headphones—and not just an isolated occurrence with an
18 individual's particular headphones. As such, Plaintiffs claims in this action did not begin to accrue until
19 the completion of the analysis conducted in connection with the filing of the operative complaint in this
20 action on November 1, 2024.

21 68. Apple's obscure support page referencing sound issues, and corresponding Service
22 Program that replaced defective earbuds made before 2020 with more defective earbuds until the end of
23 the program was not sufficient for Plaintiffs to have discovered their claims in this action. Apple's support
24 page and the Service Program described would not have led to the discovery of Plaintiffs' claims because,
25 among other things: (i) for consumers with AirPods Pro Gen 1 that fell within the arbitrarily set cut-off
26 date, the Service Program misled them to believe that Apple would fix the problem when, in fact, Apple
27 just replaced defective headphones with equally defective headphones containing an inherent defect; and
28 (ii) for consumers with AirPods Pro Gen 1 headphones manufactured after October 2020, Apple led

consumers to believe that their devices did not have sound issues. Additionally, even if the support page or the Service Program described therein had been sufficient to provide notice of the defect (which it was not), the support page describing the Service Program was not sufficiently publicized. Apple's failure to publicize the defect and the Service Program included (*inter alia*): (a) the support page was not displayed or referenced at the point of purchase; (b) no information was pushed out to Apple accounts connected to the headphones referencing the support page or the known Audio Defect notwithstanding Apple's capabilities to do so; (c) Apple's settings routinely misrepresented to consumers that Apple would not cover service of their defective AirPods Pro Gen 1s even in instances where the Service Program by Apple's own language should have been available; and (d) the support page itself grossly understated the number of effected units (limiting covered units to those made before October 2020).

69. Apple's conduct in this respect constituted active and intentional concealment and minimization of the Audio Defect, which was material to Plaintiffs' and Class Members' decision to purchase their AirPods Pro Gen 1s and had the effect of discouraging and delaying Plaintiffs and Class Members from pursuing the relief sought herein.

70. Because Apple fraudulently concealed the defects from Plaintiffs, they did not suspect (and had no reason to suspect) that there was anything inherently defective about the AirPods Pro Gen 1 product or that Apple had committed a wrongdoing.

71. As a result of Apple's active concealment of the Audio Defect and/or failure to inform Plaintiffs and Class Members of the same, any delay on the part of Plaintiffs and Class Members in filing their cause of action cannot reasonably be attributed to a lack of diligence on their part.

G. Apple's Support Program Does Not Remedy the Harm Caused by Apple's Sale of AirPods Pro Gen 1 With a Hidden Defect

72. Even though *all* AirPods Pro Gen 1 experience sound issues, Apple's Support Program only applies to headphones manufactured before October 2020. Thus, even Apple's Support Program was inaccessible to many purchasers of Apple's AirPods Pro Gen 1 headphones.

73. Furthermore, when consumers who purchased headphones made before October 2020 did attempt to take advantage of Apple's one-year warranty and return the AirPods Pro Gen 1 earbud for a new one, Apple provided replacement AirPods Pro Gen 1s that contained the exact same hidden Audio

1 Defect. Accordingly, many consumers, including Plaintiffs, have been through several pairs of AirPods
2 Pro Gen 1 only to experience the same defect each time. Consumers are therefore caught in a vicious
3 cycle: use, malfunction, replacement, repeat. And after the Service Program has expired, even those
4 arbitrarily few consumers who learned about and were able to access it are left with a broken pair of
5 AirPods Pro Gen 1 with no recourse.

6 74. Despite knowing about the Audio Defect, Apple nevertheless continued to promote and
7 market its faulty AirPods Pro Gen 1 and continued to profit handsomely from their sale. In so doing,
8 Apple has defrauded the public and cheated its consumers, including Plaintiffs.

9 **H. The One-Year Manufacturing Warranty Does Not Apply to The Defect at Issue**

10 75. Apple's one-year limited warranty is inapplicable to the audio defect alleged here.
11 Apple's one-year limited warranty covers "defects in material and workmanship" and not the inherent,
12 hidden, design defects causing the sound issues discussed herein.

13 76. A defect in the manufacture of a product exists if the product differs from apparently
14 identical products from the same manufacturer. *See* Cal. Jury Instr. (BAJI) No. 9.00.3. The classic
15 example of a manufacturing defect is "the one soda bottle in ten thousand that explodes without
16 explanation." *Barker v. Lull Eng'g Co.*, 20 Cal. 3d 413, 428 (1978) (citing *Escola v. Coca Cola Bottling*
17 *Co.*, 24 Cal. 2d 453, (1944)).

18 77. In contrast to a manufacturing defect, a design defect "cannot be identified simply by
19 comparing the injury-producing product with the manufacturer's plans or with other units of the same
20 product line, since by definition the plans and all such units will reflect the same design." *Barker*, 20
21 Cal.3d at 429.

22 78. Plaintiffs allege facts supporting a defect in design, not a manufacturing defect. Plaintiffs
23 allege that Apple's AirPods Pro Gen 1 failed to perform as expected when used in an intended manner,
24 and that replacements of their AirPods Pro Gen 1 under the Service Program did them no good because
25 they all reflected the same inherent Audio Defect. These allegations fall within the definition of a design
26 defect.

PLAINTIFFS' FACTUAL ALLEGATIONS

Plaintiff Philip Camacho

79. Plaintiff Philip Camacho is a resident and citizen of Chatsworth, California. He has resided in California since on or about August 2023.

80. On or about March 27, 2020, while living in Illinois, Mr. Camacho spent over \$200 to purchase an AirPods Pro Gen 1, model A2084, from Amazon online.

81. As Apple did not disclose the Audio Defect at point of purchase or in any of the advertisements Mr. Camacho viewed, Mr. Camacho had no reason to suspect that the AirPods Pro Gen 1 headphones could experience sound issues, including crackling or static sounds, loss of bass sounds, or an increase in background sounds.

82. Mr. Camacho was specifically looking for headphones with high-quality sound, including noise cancelling features to use on flights and while running.

83. Prior to making his purchase, Mr. Camacho saw various promotional and other material reflecting Apple's advertisement of the AirPods Pro Gen 1's noise cancelling features and high-quality audio sound. He also visited Apple's website, which advertised its AirPods as providing "active noise cancellation for immersive sound" and "transparency mode for hearing what's happening around you." He then visited Amazon's website, which displayed materially identical language, consistent with Apple's promises on its own website.

84. Nowhere in Apple's labeling or advertising did Apple disclose that its AirPods Pro Gen 1 had an Audio Defect known to, in fact, *cause* sound issues.

85. Apple's omission of the sound issues (including its omission that users could experience, *inter alia*, crackling or static sounds, loss of bass sounds, or an increase in background sounds), and Apple's representations that AirPods Pro Gen 1 provided high-quality audio with noise cancelling capabilities were substantial factors in Mr. Camacho's decision to purchase AirPods Pro Gen 1 at the high price point he paid. In other words, Mr. Camacho relied on Apple's omission of the sound issues and Apple's representations that the AirPods Pro Gen 1 were noise cancelling and would eliminate unwanted sounds, while providing him with a high-quality sound experience.

1 86. Mr. Camacho would not have bought or would have paid substantially less for his AirPods
2 Pro Gen 1 had he known that they had an Audio Defect known to cause sound issues.

3 87. Contrary to Apple's representations that its AirPods Pro Gen 1 would provide listeners
4 with high-quality sound that eliminated unwanted noise with its noise cancelling features, and although
5 Apple did not disclose in its advertising that its AirPods Pro Gen 1 were known to cause sound issues,
6 Mr. Camacho experienced audio issues with his AirPods Pro Gen 1 that rendered them unusable.

7 88. Approximately three months after his purchase, in or about the summer of 2020, Mr.
8 Camacho first experienced issues with his AirPods Pro Gen 1. Specifically, he experienced static and
9 crackling sounds from one of his AirPods Pro Gen 1 earbuds.

10 89. The static and crackling started intermittently and then presented in his second earbud,
11 worsening over time and including loud, piercing screeching (akin to a high-pitched frequency than can
12 happen from feedback when putting a microphone to a speaker) to a point where he stopped using his
13 AirPods Pro Gen 1 entirely in or around August 2022.

14 90. Apple never notified Mr. Camacho that it had identified an Audio Defect in its Apple
15 AirPods Pro Gen 1 or that it had implemented the (albeit ineffective) Service Program.

16 91. In researching the problem, Mr. Camacho found complaints from other AirPods Pro Gen
17 1 purchasers online, which prompted Mr. Camacho to contact Apple and inform the company that he was
18 experiencing the same type of crackling and other sound issues as the similar customer complaints he
19 had seen online.

20 92. On or about August 18, 2022, Mr. Camacho went to the Apple Genius Bar in Woodfield
21 Mall in Illinois, which tested his AirPods Pro Gen 1 and confirmed that both earbuds failed Apple's sound
22 test. Although Apple replaced both earbuds under its Service Program, unbeknownst to Mr. Camacho at
23 the time, the replacement AirPods Pro Gen 1s were equally defective as they had the same Audio Defect.

24 93. After receiving his replacements, Mr. Camacho thus began experiencing the same audio
25 issues with his replacement AirPods Pro Gen 1. He recalls contacting Apple to get another replacement,
26 but Apple advised he was no longer eligible at that time.

27 94. On or about November 20, 2024, Mr. Camacho returned to the Apple store in Northridge
28 Mall, California regarding the audio issues he was experiencing. Again, the Genius Bar performed its

1 sound test and informed Mr. Camacho that his replacement AirPods Pro Gen 1 also failed, but that Mr.
2 Camacho would need to buy an entirely new pair for \$249 if he wanted to replace them—approximately
3 the same price he had already paid for his defective pair. Mr. Camacho is thus left with a broken pair of
4 AirPods Pro Gen 1 with no recourse.

5 **Plaintiff Marc Schaefer**

6 95. Plaintiff Marc Schaefer is a resident and citizen of San Diego, California. At all times
7 relevant hereto, he has resided in California.

8 96. On or about March 24, 2020, Mr. Schaefer spent over \$250 with tax to purchase a pair of
9 Apple AirPods Pro Gen 1, model A2084, from Amazon online.

10 97. As Apple did not disclose the Audio Defect at point of purchase or in any of the
11 advertisements Mr. Schaefer viewed, he had no reason to suspect that the AirPods Pro Gen 1 headphones
12 could experience sound issues, including crackling or static sounds, loss of bass sounds, or an increase
13 in background sounds.

14 98. Mr. Schaefer worked from home and was specifically looking for headphones that would
15 allow him to control the amount of outside noise let in, while providing him with high-quality sound.

16 99. Mr. Schaefer regularly monitors Apple's new product releases. Prior to making his
17 purchase, Mr. Schaefer saw various promotional and other material reflecting Apple's advertisement of
18 the AirPods Pro Gen 1's noise cancelling features and high-quality audio sound. He also visited Apple's
19 website, which advertised the AirPods Pro Gen 1 as providing "active noise cancellation for immersive
20 sound" and "transparency mode for hearing what's happening around you." He then visited Amazon's
21 website, which displayed materially identical language, consistent with Apple's promises on its own
22 website.

23 100. Mr. Schaefer was drawn to and purchased his AirPods Pro Gen 1 specifically because of
24 these promises by Apple that the AirPods Pro Gen 1 would provide high-quality sound while blocking
25 unwanted sound produced internally, externally or both.

26 101. Nowhere in Apple's labeling or advertising did Apple disclose that its AirPods Pro Gen 1
27 had an Audio Defect known to, in fact, *cause* sound issues.
28

102. Apple's omission of the sound issues (including its omission that users could experience, *inter alia*, crackling or static sounds, loss of bass sounds, or an increase in background sounds), and Apple's representations that its AirPods Pro Gen 1 provided high-quality audio with noise cancelling capabilities were substantial factors in Mr. Schaefer's decision to purchase AirPods Pro Gen 1 at the high price point he paid. In other words, in making his purchase, Mr. Schaefer relied on Apple's omissions about the true sound issues with its AirPods Pro Gen 1 and its representations that the AirPods Pro Gen 1 were noise cancelling and would eliminate unwanted sounds, while providing him with a high-quality sound experience.

103. Mr. Schaefer would not have bought or would have paid substantially less for his AirPods Pro Gen 1 had he known that they had an Audio Defect known to cause sound issues.

104. Contrary to Apple's representations that its AirPods Pro Gen 1 would provide listeners with high-quality sound that eliminated unwanted noise with its noise cancelation and transparency modes, and although Apple did not disclose in its advertising or at the point of purchase that its AirPods Pro Gen 1 were known to cause sound issues, Mr. Schaefer experienced audio issues with his AirPods Pro Gen 1 and with every AirPods Pro Gen 1 earbud replacement that Apple provided—as the replacement AirPods Pro Gen 1 earbuds contained the same inherent defect.

105. Apple never notified Mr. Schaefer that it had identified an Audio Defect in its AirPods Pro Gen 1 or that it had implemented the (albeit ineffective) Service Program.

106. Mr. Schaefer first experienced issues with his AirPods Pro Gen 1 about one year after his purchase. Specifically, he experienced static and crackling sounds in one earbud.

107. He went to the Apple Genius Bar to report the static and crackling sounds he was experiencing in or about June 2021. The Genius Bar performed its sound test and informed Mr. Schaefer that one of his earbuds failed the audio test. Apple replaced this earbud at no cost to Mr. Schaefer, but unbeknownst to him at the time, the replacement AirPods Pro Gen 1 earbud was equally defective as it had the same Audio Defect.

108. Thereafter, he again began experiencing the same crackling and static audio issues with his replacement AirPods Pro Gen 1 earbud as well as his original AirPods Pro Gen 1 earbud.

109. On or about April 4, 2023, Mr. Schaefer again went to an Apple store to complain of the crackling and static sounds in both earbuds and poor-quality audio experience. The Genius Bar again performed its sound test and informed Mr. Schaefer that both earbuds failed Apple's audio diagnostic test. Apple replaced both earbuds at no cost, but again the replacement AirPods Pro Gen 1 earbuds were equally defective.

110. In or about late 2024, Mr. Schaefer again began experiencing the same crackling and static audio issues with his replacement AirPods Pro Gen 1. And he again returned to the Genius Bar.

111. The Apple employee again took his AirPods Pro Gen 1 for a sound test. Both earbuds failed. Although the Apple employee informed Mr. Schaefer that his AirPods Pro Gen 1 had failed the sound test, the Apple employee told him that he would have to buy replacement earbuds or a new set, which would have required him to spend hundreds of more dollars in addition to the hundreds of dollars he had already spent for his initial defective pair. Mr. Schaefer is thus left with a broken pair of AirPods Pro Gen 1 with no recourse.

Plaintiff Jeffrey Nykerk

112. Plaintiff Jeffrey Nykerk is a resident and citizen of Jacksonville, Florida. At all times relevant hereto, he has resided in Florida.

113. On or about March 12, 2022, Mr. Nykerk spent nearly \$200 to purchase a pair of Apple AirPods Pro Gen 1, model A2084, from Amazon online.

114. As Apple did not disclose the Audio Defect at point of purchase or in any of the advertisements Mr. Nykerk viewed, he had no reason to suspect that the AirPods Pro Gen 1 headphones could experience sound issues, including crackling or static sounds, loss of bass sounds, or an increase in background sounds.

115. Mr. Nykerk was looking for high-quality noise-cancelling headphones that he could use at the fitness center and which would control the amount of outside noise let in while still providing him with high-quality sound.

116. Prior to purchase, he saw advertisements about Apple’s AirPods Pro Gen 1 touting their noise-cancelling features. He also visited Apple’s website, which advertised its AirPods Pro Gen 1, *inter alia*, as providing “active noise cancellation for immersive sound” and “transparency mode for hearing

1 what's happening around you." In addition, Mr. Nykerk recalls visiting local stores where Apple's
2 AirPods Pro Gen 1 were on sale, and where the information on display was consistent with what he had
3 seen on Apple's website.

4 117. At the time of his purchase, Amazon's website also included representations that were
5 consistent with Apple's website regarding the AirPods Pro Gen 1.

6 118. Mr. Nykerk was specifically drawn to and purchased the AirPods Pro Gen 1 because
7 Apple promised that its headphones would block unwanted outside sound and would produce a clear,
8 high-quality sound experience.

9 119. Nowhere in Apple's labeling or advertising did Apple disclose that its AirPods Pro Gen 1
10 had an Audio Defect known to, in fact, *cause* sound issues.

11 120. Apple's omission of the sound issues (including its omission that users could experience,
12 *inter alia*, crackling or static sounds, loss of bass sounds, or an increase in background sounds) together
13 with Apple's representations that AirPods Pro Gen 1 had noise cancelling capabilities and provided high-
14 quality audio were substantial factors in Mr. Nykerk's decision to purchase his AirPods Pro Gen 1 at the
15 high price point he did. In other words, in making his purchase, Mr. Nykerk relied on Apple's omission
16 of the truth about AirPods Pro Gen 1's sound issues, and on representations that its AirPods Pro Gen 1
17 were noise cancelling and would eliminate unwanted sounds so as to provide him with a high-quality
18 sound experience.

19 121. Mr. Nykerk would not have bought his AirPods Pro Gen 1 had he known that they had an
20 Audio Defect known to cause sound issues.

21 122. Contrary to Apple's representations that AirPods Pro Gen 1 would provide listeners with
22 high-quality sound that eliminated unwanted noise with its noise cancelling feature, and although Apple
23 did not disclose in its advertising that its AirPods Pro Gen 1 were known to cause sound issues, Mr.
24 Nykerk experienced audio issues with his AirPods Pro Gen 1.

25 123. Specifically, Mr. Nykerk experienced static and crackling sounds that worsened over time
26 to the point where he had to stop using them altogether.

27 124. Apple never notified Mr. Nykerk that it had identified an Audio Defect in Apple's AirPods
28 Pro Gen 1 or that it had implemented the (albeit ineffective) Service Program. Instead, Apple's iPhone

1 “Settings”—where IOS and general software updates are pushed out—were automatically programmed
2 to state “Coverage Expired” and thereby lead consumers to believe that they had no recourse after a
3 certain point in time.

4 125. On or about December 23, 2024, Mr. Nykerk visited the Apple store in the St. Johns
5 Towns Center in Jacksonville, Florida regarding the sound issues he was experiencing with his AirPods
6 Pro Gen 1. At this time, the Genius Bar performed its sound test and informed Mr. Nykerk that both
7 earbuds of his AirPods Pro Gen 1 had failed Apple’s audio test, but that Apple would not replace them.
8 Instead, Apple informed Mr. Nykerk that he could replace each individual earbud for \$89 but
9 recommended he buy a new pair for \$249—even more expensive than the price he had paid for his first
10 defective pair. Mr. Nykerk is thus left with a broken pair of AirPods Pro Gen 1 with no recourse.

11 **Plaintiff David Ambrozic**

12 126. Plaintiff David Ambrozic is a resident and citizen of Chicago, Illinois. At all times relevant
13 hereto, he has resided in Illinois.

14 127. On or about August 31, 2021, Plaintiff Ambrozic spent nearly \$200 to purchase an
15 AirPods Pro Gen 1, model A2084, from Best Buy online.

16 128. As Apple did not disclose the Audio Defect at point of purchase or in any of the
17 advertisements Mr. Ambrozic viewed, he had no reason to suspect that the AirPods Pro Gen 1 headphones
18 could experience sound issues, including crackling or static sounds, loss of bass sounds, or an increase
19 in background sounds.

20 129. Prior to his purchase, Mr. Ambrozic viewed promotional material from Apple, including
21 an advertisement (<https://www.youtube.com/watch?v=QkmmF4yTjDc>) and Apple’s original press
22 release announcing the AirPods Pro Gen 1, which touted the AirPods Pro Gen 1’s noise cancelling
23 features and ability to provide users a high-quality audio, immersive sound experience.

24 130. He also visited Apple’s website, which similarly advertised its AirPods Pro Gen 1 as
25 providing “active noise cancellation for immersive sound” and “transparency mode for hearing what’s
26 happening around you.” He then visited BestBuy’s website to make his purchase, which displayed
27 materially identical language, consistent with Apple’s promises on its own website.
28

131. Nowhere in Apple's labeling or advertising did Apple disclose that AirPods Pro Gen 1 had an Audio Defect known to, in fact, *cause* sound issues.

132. Apple's omission of the sound issues (including its omission that users could experience, *inter alia*, crackling or static sounds, loss of bass sounds, or an increase in background sounds), and Apple's representations that AirPods Pro Gen 1 provided high-quality audio and had noise cancelling capabilities were substantial factors in Mr. Ambrozic's decision to purchase AirPods Pro Gen 1 at the high price point he did. Mr. Ambrozic had previously paid significantly less for Apple's AirPods that were not Pros and had attributed the higher price of the AirPods Pro Gen 1 to their noise cancelling features. Because Mr. Ambrozic was living in a college dorm at the time, where surrounding sound can become quite noisy, Mr. Ambrozic was motivated by the AirPods Pros promise of its noise cancelling features.

133. In other words, in making his purchase, Mr. Ambrozic relied on Apple's omissions about the true sound issues with its AirPods Pro Gen 1 and its representations that the AirPods Pro Gen 1 were noise cancelling and would eliminate unwanted sounds, while providing him with a high-quality sound experience.

134. Mr. Ambrozic would not have bought or would have paid substantially less for his AirPods Pro Gen 1 had he known that they had an Audio Defect known to cause sound issues.

135. Contrary to Apple's representations that AirPods Pro Gen 1 would provide listeners with high-quality sound that eliminated unwanted noise with its noise cancelling features, and although Apple did not disclose in its advertising that its AirPods Pro Gen 1 were known to cause sound issues, Mr. Ambrozic experienced audio issues with his AirPods Pro Gen 1 that rendered them unusable.

136. Over a year following his initial purchase, Mr. Ambrozic experienced static and crackling sounds, including at high frequencies, which were physically discomforting. The issue was most pronounced in his left earbud. He thus replaced his left earbud for an additional cost of around \$79.99. But the replacement soon became just as bad as the initial earbud, presenting the same crackling and static he had experienced previously.

137. Apple never notified Mr. Ambrozic that it had identified an Audio Defect in Apple AirPods Pro Gen 1 or that it had implemented the Service Program.

1 for hearing what’s happening around you.” Mr. Adair also regularly monitors Apple’s new product
2 releases. After learning more about the AirPods Pro Gen 1’s promised features, Mr. Adair purchased the
3 AirPods Pro Gen 1 specifically because Apple promised that its noise cancelling features would block
4 unwanted sound and produce clear, high-quality sound for their users.

5 146. He then visited the Apple store to make his purchase and spoke with an Apple employee,
6 who likewise conveyed the sound quality and noise cancelling features of the AirPods Pro Gen 1,
7 consistent with Apple’s website.

8 147. Nowhere in Apple’s labeling or advertising did Apple disclose that its AirPods Pro Gen 1
9 had an Audio Defect known to, in fact, *cause* sound issues.

10 148. Mr. Adair needed headphones to use at the gym and for commuting that would allow him
11 to control the amount of outside noise let in and provide him with high-quality sound. Apple’s omission
12 of the sound issues (including its omission that users could experience, *inter alia*, crackling or static
13 sounds, loss of bass sounds, or an increase in background sounds), and Apple’s representations that its
14 AirPods Pro Gen 1 had noise cancelling capabilities and provided high-quality audio were substantial
15 factors in Mr. Adair’s decision to purchase AirPods Pro Gen 1 at the high price point he did.

16 149. In other words, in making his purchase, Mr. Adair relied on Apple’s omissions of the true
17 sound issues with its AirPods Pro Gen 1 and its representations that the AirPods Pro Gen 1 were noise
18 cancelling and would eliminate unwanted sounds, while providing him with a high-quality sound
19 experience.

20 150. Mr. Adair would not have bought or would have paid substantially less for his AirPods
21 Pro Gen 1 had he known that they had an Audio Defect known to cause sound issues.

22 151. Contrary to Apple’s representations that AirPods Pro Gen 1 would provide listeners with
23 high-quality sound that eliminated unwanted noise with its noise cancelling features, and although Apple
24 did not disclose in its advertising that its AirPods Pro Gen 1 were known to cause sound issues, Mr. Adair
25 experienced audio issues with his AirPods Pro Gen 1 that rendered them unusable.

26 152. Mr. Adair experienced issues with his AirPods Pro Gen 1 beginning in or about the
27 summer of 2022. Specifically, he experienced static and crackling sounds in his right earbud. A few
28 months later, the crackling presented in his left earbud too, with the sound issues worsening over time.

153. Apple never notified Mr. Adair that it had identified an Audio Defect in its Apple AirPods Pro Gen 1 or that it had implemented the Service Program.

154. On or about November 11, 2022, Mr. Adair went to the Grand Central Apple Genius Bar to report the static and crackling sounds he was experiencing when using his AirPods Pro Gen 1. After reporting the issue, the Apple representative told Mr. Adair to come back to the store later after they had performed an audio test to verify the issue. When Mr. Adair returned to the store, Apple informed him that both of his earbuds had failed the audio test and provided Mr. Adair with a replacement pair of Apple AirPods Pro Gen 1.

155. Unbeknownst to Mr. Adair at the time, however, the replacement AirPods Pro Gen 1 headphones were also defective as they had the same Audio Defect.

156. After Apple provided him with a replacement pair, Mr. Adair began experiencing similar crackling and static audio issues.

157. On or about November 26, 2024, Mr. Adair went to the Soho Apple store in Manhattan, New York, regarding the audio issues he was experiencing. At that time, the Genius Bar again performed audio diagnostics and informed Mr. Adair that his replacement AirPods Pro Gen 1 had failed in both earbuds, but that he would have to pay to replace them at the out of warranty cost—either \$89 per earbud or buy a new pair for \$249, which would have also required him to spend hundreds of more dollars in addition to the hundreds of dollars he had already spent for his initial defective pair. Mr. Adair is thus left with a broken pair of AirPods Pro Gen 1 with no recourse.

Plaintiff Daniel Kadyrov

158. Plaintiff Daniel Kadyrov is a resident and citizen of Manhattan, New York. At all times relevant hereto, he has resided in New York.

159. On or about November 27, 2021, Mr. Kadyrov spent nearly \$400 to purchase two pairs of Apple AirPods Pro Gen 1, model A2084, from Target online. He gave one pair away as a gift and kept one pair for his own personal use.

160. Prior to his purchase of the Apple AirPods Pro Gen 1, Mr. Kadyrov saw various promotional and other material reflecting Apple's advertisement of the AirPods Pro Gen 1's noise cancelling features and high-quality audio sound. Mr. Kadyrov also regularly monitors Apple's new

1 product releases, and he visited Apple's website, which advertised its AirPods as providing "active noise
2 cancellation for immersive sound" and "transparency mode for hearing what's happening around you."
3 He then visited Target's website, which displayed materially identical language, consistent with Apple's
4 promises on its own website.

5 161. Mr. Kadyrov was drawn to and purchased the AirPods Pro Gen 1 specifically because
6 Apple promised the headphones would block unwanted sound and produce clear, high-quality sound.

7 162. Nowhere in Apple's labeling or advertising did Apple disclose that its AirPods Pro Gen 1
8 had an Audio Defect known to, in fact, *cause* sound issues.

9 163. Apple's omission of the sound issues (including its omission that users could experience,
10 *inter alia*, crackling or static sounds, loss of bass sounds, or an increase in background sounds), and
11 Apple's representations that its AirPods Pro Gen 1 had noise cancelling capabilities and would provide
12 high-quality audio were substantial factors in Mr. Kadyrov's decision to purchase AirPods Pro Gen 1 at
13 the high price point he did. In other words, in making his purchase, Mr. Kadyrov relied on Apple's
14 omissions about the true sound issues with its AirPods Pro Gen 1 and its representations that the AirPods
15 Pro Gen 1 were noise cancelling and would provide him with a high-quality sound experience.

16 164. Mr. Kadyrov would not have bought or would have paid substantially less for his AirPods
17 Pro Gen 1 had he known that they had an Audio Defect known to cause sound issues.

18 165. Contrary to Apple's representations that AirPods Pro Gen 1 would provide listeners with
19 high-quality sound that eliminated unwanted noise with its noise cancelling features, and although Apple
20 did not disclose in its advertising that its AirPods Pro Gen 1 were known to cause sound issues, Mr.
21 Kadyrov experienced audio issues with his AirPods Pro Gen 1. Specifically, he experienced static and
22 crackling sounds in both earbuds, as well as high-pitched screeching sounds that would increase in
23 volume rapidly and sporadically to the point where it felt dangerous to leave them in his ears.

24 166. Apple never notified Mr. Kadyrov that it had identified an Audio Defect in Apple AirPods
25 Pro Gen 1 or that it had implemented the (albeit ineffective) Service Program.

26 167. On or about March 2023, Apple sent Mr. Kadyrov a replacement pair of Apple AirPods
27 Pro Gen 1.
28

168. Unbeknownst to Mr. Kadyrov at the time, the replacement AirPods Pro Gen 1 headphones were equally defective as they had the same Audio Defect.

169. Shortly after receipt of the replacement AirPods Pro Gen 1 headphones, they began having the same crackling and static audio issues.

170. On or about December 1, 2024, Mr. Kadyrov went to an Apple store in Manhattan, New York, regarding the audio issues he was experiencing. The Genius Bar ran audio diagnostics on the headphones, which confirmed the audio static and crackling sounds and frequency failure of his AirPods Pro Gen 1 headphones. However, Mr. Kadyrov was informed by the Apple employee that Apple would not replace his AirPods Pro Gen 1 and that he would instead need to buy a new pair for hundreds of dollars more. Mr. Kadyrov is thus left with a broken pair of AirPods Pro Gen 1 with no recourse.

Plaintiff Stacey Rodgers

171. Plaintiff Stacey Rodgers is a resident and citizen of Painesville, Ohio. At all times relevant hereto, she has resided in Ohio.

172. On or about July 24, 2021, Ms. Rodgers spent over \$250 to purchase an Apple AirPods Pro Gen 1, model A2084, from a BestBuy store located in Mentor, Ohio.

173. Prior to her purchase, Ms. Rodgers did not know because Apple did not disclose to her that the AirPods Pro Gen 1 had an Audio Defect known to cause sound issues.

174. Based on Apple's conduct, including its omissions of the sound issues (namely, that users could experience, *inter alia*, crackling or static sounds, loss of bass sounds, or an increase in background sounds), Ms. Rodgers reasonably believed that the AirPods Pro Gen 1 provided high-quality audio and would function like high-end headphones as she paid an exorbitant purchase price. Having headphones with high-quality sound worth the expensive, high-end price she paid was a substantial factor in Ms. Rodger's decision to purchase her AirPods Pro Gen 1. In other words, her decision to enter the higher-end earphone market and pay the amount of money that she did was based on her understanding that the AirPods Pro Gen 1 that she purchased would provide her with a high-quality sound experience as advertised.

1 immersive sound experience. Nowhere in Apple's labeling or advertising did Apple disclose that AirPods
2 Pro Gen 1 had an Audio Defect known to, in fact, *cause* sound issues.

3 184. Apple's omission of the sound issues (including its omission that users could experience,
4 *inter alia*, crackling or static sounds, loss of bass sounds, or an increase in background sounds), and
5 Apple's representations that AirPods Pro Gen 1 had noise cancelling capabilities and that AirPods Pro
6 Gen 1 provided high-quality audio were substantial factors in Ms. LaBella's decision to purchase AirPods
7 Pro Gen 1 for over \$250. In other words, Ms. LaBella relied on Apple's representations that the AirPods
8 Pro Gen 1 were noise cancelling and would eliminate unwanted sounds, and that the headphones would
9 provide her with a high-quality sound experience.

10 185. Ms. LaBella would not have bought or would have paid substantially less for her AirPods
11 Pro Gen 1 had she known that they had an Audio Defect known to cause sound issues.

12 186. Contrary to Apple's representations that AirPods Pro Gen 1 would provide listeners with
13 high-quality sound that eliminated unwanted noise with its noise cancelling features, and although Apple
14 did not disclose in its advertising that its AirPods Pro Gen 1 were known to cause sound issues, Ms.
15 LaBella experienced audio issues with her AirPods Pro Gen 1 that rendered them unusable.

16 187. Just over a year following her purchase, Ms. LaBella experienced static and crackling
17 sounds in both earbuds after inserting her AirPods Pro Gen 1 earbuds into her ears. The static and
18 crackling started intermittently and then worsened over time until she could not use either earbud at all.

19 188. Apple never notified Ms. LaBella that it had identified an Audio Defect in Apple AirPods
20 Pro Gen 1 or that it had implemented the Service Program.

21 189. Ms. LaBella made an appointment at an Apple store, on or about May 16, 2024, regarding
22 the sound issues she was experiencing with her AirPods Pro Gen 1. At that appointment, Apple tested
23 Ms. LaBella's AirPods Pro Gen 1 earbuds using its sound test and confirmed that both earbuds failed.
24 Although Apple's sound test confirmed that her AirPods Pro Gen 1 were defective, Apple informed Ms.
25 LaBella that she would have to pay \$89 apiece per earbud to replace them or purchase a new set for
26 \$249—the same price she had paid for her defective pair. Ms. LaBella is thus left with a broken pair of
27 AirPods Pro Gen 1 with no recourse.
28

Plaintiff Michael Pawson

190. Plaintiff Michael Pawson is a resident and citizen of Harris County, Texas. At all times relevant hereto, he has resided in Texas.

191. On or about November 25, 2019, Mr. Pawson spent over \$250 with tax to purchase a pair of Apple AirPods Pro Gen 1, model A2084, from Target online.

192. Mr. Pawson was looking for headphones with high quality sound and had been waiting for Apple to release ones with a noise cancellation feature. He was thus drawn to the AirPods Pro Gen 1 specifically because of their noise cancelling capabilities.

193. Prior to purchase, Mr. Pawson visited Apple's website, which advertised its AirPods as providing "active noise cancellation for immersive sound" and "transparency mode for hearing what's happening around you."⁴³ He then visited Target's website, which displayed materially identical language, consistent with Apple's promises on its own website.⁴⁴

194. Nowhere in Apple's labeling or advertising did Apple disclose that AirPods Pro Gen 1 had an Audio Defect known to, in fact, *cause* sound issues.

195. Apple's omission of the sound issues (including its omission that users could experience, *inter alia*, crackling or static sounds, loss of bass sounds, or an increase in background sounds), and Apple's representations that the AirPods Pro Gen 1 had noise cancelling features and provided high-quality audio were substantial factors in Mr. Pawson's decision to purchase AirPods Pro Gen 1 for over \$250.

196. Prior to his purchase of the Apple AirPods Pro Gen 1, Mr. Pawson had purchased various generic off-brand headphones. The promise of high-quality sound with the noise cancelling feature of the AirPods Pro Gen 1 motivated Mr. Pawson to enter the more expensive Apple headphone market.

197. In other words, in making his purchase, Mr. Pawson relied on Apple's representations that the AirPods Pro Gen 1 were noise cancelling and would eliminate unwanted sounds, so as to provide him with a high-quality sound experience.

⁴³ Apple AirPods Pro Gen 1 web advertisement, posted October 28, 2019, available here: <https://perma.cc/SQG3-PZCU> (last visited Oct. 1, 2024).

⁴⁴ See, e.g., Target, as of March 5, 2020, available here: <https://perma.cc/A2NV-A7R8>.

1 198. Mr. Pawson would not have bought or would have paid substantially less for his AirPods
2 Pro Gen 1 had he known that AirPods Pro Gen 1 had an Audio Defect known to cause sound issues.

3 199. Contrary to Apple's representations that AirPods Pro Gen 1 would provide listeners with
4 high-quality sound that eliminated unwanted noise with its noise cancelling feature, and although Apple
5 did not disclose in its advertising that AirPods Pro Gen 1 were known to cause sound issues, Mr. Pawson
6 experienced audio issues with his AirPods Pro Gen 1 soon after purchase and with every AirPods Pro
7 Gen 1 earbud replacement that Apple provided—as the replacement AirPods Pro Gen 1 earbuds
8 contained the same inherent defect.

9 200. Mr. Pawson first experienced issues with his AirPods Pro Gen 1 just under one year
10 following his purchase, in November 2020. Specifically, he experienced static and crackling sounds from
11 his right AirPods Pro Gen 1 earbud. These sound issues produced an inconsistent, poor quality listening
12 experience.

13 201. In researching the problem, Mr. Pawson found complaints from other AirPods Pro Gen 1
14 purchasers online, which prompted Mr. Pawson to contact Apple and inform the company that he was
15 experiencing the same type of crackling and other sound issues as the similar customer complaints he
16 had seen online. Apple agreed to replace one of Mr. Pawson's earbuds with another AirPods Pro Gen 1
17 earbud, but unbeknownst to Mr. Pawson at the time, the replacement AirPods Pro Gen 1 earbud was
18 equally defective as it had the same Audio Defect.

19 202. In January 2021, Mr. Pawson thus began experiencing the same audio issues again, but
20 this time with his left AirPods Pro Gen 1 earbud. On or about January 19, 2021, he again contacted Apple
21 and informed the company that he was experiencing the same problems that he had experienced with his
22 right earbud a few months earlier. Apple thus again exchanged Mr. Pawson's left AirPods Pro Gen 1
23 earbud with another AirPods Pro Gen 1, which again contained the same inherent Audio Defect.

24 203. On or about November 2023, the same static and crackling noises presented whenever he
25 used his replacement AirPods Pro Gen 1. Initially, the audio disruption was intermittent and inconsistent.
26 But the audio disruption quickly worsened to a point where he stopped using his AirPods Pro Gen 1
27 entirely.
28

governs damages. Hence, the Court may award restitution even if it determines that Plaintiff and Class members fail to sufficiently adduce evidence to support an award of damages. Damages and restitution are not necessarily the same amount. Unlike damages, restitution is not limited to the amount of money the defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including restitution, entitles a plaintiff to recover all profits from the wrongdoing, even where the original funds taken have grown far greater than the legal rate of interest would recognize. Legal claims for damages are not equally certain as restitution because claims under the statutes herein entail few elements. In short, significant differences in proof and certainty establish that any potential legal claim cannot serve as an adequate remedy at law. Due to these differences in proof and certainty, equitable relief is appropriate because Plaintiffs may lack an adequate remedy at law for damages. Even if legal remedies may be available, Plaintiffs seek equitable remedies in the alternative to legal remedies which are as of yet uncertain.

210. Legal remedies available to Plaintiffs and Class Members are also inadequate because they do not address likely future harms. As of the date of this filing, Apple has failed to repair, recall, and/or replace the AirPods Pro Gen 1 or extend the applicable warranties to a reasonable period of time, or to provide Plaintiffs and Class Members with appropriate curative notice regarding the existence and cause of the Audio Defect. If Apple is not ordered to take these or similar actions, Apple will or may continue to injure Plaintiffs and Class Members through the misconduct alleged herein.

CLASS ACTION ALLEGATIONS

211. Plaintiffs bring this suit as a class action on behalf of themselves and on behalf of all others similarly situated pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of the provisions of Rule 23.

212. Plaintiffs seek to represent the following:

Nationwide Class: All persons or entities in the United States that purchased Apple AirPods Pro Gen 1.

213. In the alternative, Plaintiffs seek to represent the following state sub-classes:

California Class: All persons in California that purchased Apple AirPods Pro Gen 1.

Florida Class: All persons in Florida that purchased Apple AirPods Pro Gen 1.

1 Illinois Class: All persons in Illinois that purchased Apple AirPods Pro Gen 1.

2 New York Class: All persons in New York that purchased Apple AirPods Pro Gen 1.

3 Ohio Class: All persons in Ohio that purchased Apple AirPods Pro Gen 1.

4 Pennsylvania Class: All persons in Pennsylvania that purchased Apple AirPods Pro Gen 1.

5 Texas Class: All persons in Texas that purchased Apple AirPods Pro Gen 1.

6 214. The Nationwide Class and (alternative) state classes will be referred to collectively as the
7 “Class.”

8 215. **Numerosity**: Members of the Class(es) are so numerous that joinder of all members is
9 impracticable. While the exact number of Class Members remains unknown at this time, upon
10 information and belief, there are millions of putative Class Members throughout the United States, and
11 at least hundreds of thousands in each state. Indeed, in 2021 alone, Apple sold an estimated \$12.1 billion
12 worth of AirPods (all models) and holds the largest share of the wireless headset market.⁴⁵

13 216. **Commonality**: This action involves common questions of law and fact, which
14 predominate over any questions affecting individual Class Members. These common legal and factual
15 questions include, but are not limited to, the following:

- 16 a. Whether the AirPods Pro Gen 1 suffer from an Audio Defect that causes “sound
17 issues” to manifest;
- 18 b. Whether Apple engaged in the misrepresentations and omissions alleged herein;
- 19 c. Whether Apple breached its express warranties as alleged herein;
- 20 d. Whether Apple designed, manufactured, marketed, distributed, sold or otherwise
21 placed the AirPods Pro Gen 1 into the stream of commerce in the United States
22 knowing that they suffered from the Audio Defect;
- 23 e. Whether Apple intentionally concealed the Audio Defect in the AirPods Pro Gen
24 1 from consumers;
- 25 f. Whether Plaintiffs and the other Class Members have been harmed by Apple’s
26 conduct as alleged herein;

27
28 ⁴⁵ See <https://perma.cc/4URP-3F8A> (estimates based on LinkedIn, Above Avalon data, and estimates from Apple headphones revenue numbers) (last visited Sept. 18, 2024).

1 g. Whether Apple was unjustly enriched by its deceptive practices; and

2 h. Whether Plaintiffs and the Class are entitled to equitable or injunctive relief.

3 217. **Typicality:** Plaintiffs' claims are typical of those of the other Class Members because,
4 *inter alia*, all members of the Class(es) were injured through the common misconduct described above
5 and were subject to Apple's unfair and unlawful conduct. Plaintiffs are advancing the same claims and
6 legal theories on behalf of themselves and all members of the Class(es).

7 218. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent and protect
8 the interests of the Class in that they have no disabling conflicts of interest that would be antagonistic to
9 those of the other Class Members. Plaintiffs seek no relief that is antagonistic or adverse to the other
10 Class Members and the infringement of the rights and the damages they have suffered are typical of other
11 Class Members. Plaintiffs have retained counsel experienced in complex consumer class action litigation,
12 and Plaintiffs intend to prosecute this action vigorously.

13 219. **Superiority:** Class litigation is an appropriate method for fair and efficient adjudication of
14 the claims involved. Class action treatment is superior to all other available methods for the fair and
15 efficient adjudication of the controversy alleged herein; it will permit a large number of Class Members
16 to prosecute their common claims in a single forum simultaneously, efficiently, and without the
17 unnecessary duplication of evidence, effort, and expense that hundreds of individual actions would
18 require. Class action treatment will permit the adjudication of relatively modest claims by certain Class
19 Members, who could not individually afford to litigate a complex claim against large corporate
20 defendants. Further, even for those Class Members who could afford to litigate such a claim, it would
21 still be economically impractical.

22 220. The nature of this action and the nature of laws available to Plaintiffs and the Class make
23 the use of the class action device a particularly efficient and appropriate procedure to afford relief to
24 Plaintiffs and the Class Members for the wrongs alleged because Apple would necessarily gain an
25 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
26 each individual Class Member with superior financial and legal resources. Although Plaintiffs and Class
27 Members paid a high price point of hundreds of dollars for their defective AirPods Pro Gen 1, the costs
28 of individual suits could unreasonably consume the amounts that would be recovered. Further, proof of

1 a common course of conduct to which Plaintiffs were exposed is representative of that experienced by
2 the Class and will establish the right of each member of the Class to recover on the cause of action alleged,
3 and individual actions would create a risk of inconsistent results and would be unnecessary and
4 duplicative of this litigation.

5 221. Plaintiffs reserve the right to modify or amend the definition of the proposed Class and
6 (alternative) state classes before the Court determines whether certification is appropriate and as the
7 parties engage in discovery.

8 222. The class action is superior to all other available methods for the fair and efficient
9 adjudication of this controversy. Because of the number and nature of common questions of fact and law,
10 multiple separate lawsuits would not serve the interest of judicial economy.

11 223. Individual litigation of the claims of all Class Members is economically unfeasible and
12 procedurally impracticable. While the aggregate damages sustained by the Class Members are likely in
13 the millions of dollars, the individual damages incurred by each Class Member resulting from Apple's
14 wrongful conduct are too small to warrant the expense of individual suits. The likelihood of individual
15 Class Members prosecuting separate claims is remote, and even if every Class Member could afford
16 individual litigation, the court system would be unduly burdened by individual litigation of such cases.
17 Individual Class Members do not have a significant interest in individually controlling the prosecution
18 of separate actions, and the individualized litigation would also present the potential for varying,
19 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to
20 the court system resulting from multiple trials of the same factual issues. Plaintiffs know of no difficulty
21 to be encountered in the management of this action that would preclude its maintenance as a class action.
22 A class action in this matter will avoid case management difficulties and provide multiple benefits,
23 including efficiency, economy of scale, unitary adjudication with consistent results and equal protection
24 of the rights of each Class member, all by way of the comprehensive and efficient supervision of the
25 litigation by a single court.

26 224. Notice of a certified class action and of any result or resolution of the litigation can be
27 provided to Class Members by first-class mail, email, or publication, or such other methods of notice as
28 deemed appropriate by the Court.

225. Plaintiffs do not anticipate any difficulty in the management of this litigation.

COUNTS

NATIONWIDE CLAIMS

FIRST CLAIM FOR RELIEF

VIOLATIONS OF THE CONSUMER PROTECTION ACTS OF 50 STATES (by All Plaintiffs on Behalf of the Nationwide Class)

226. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

227. Plaintiffs bring these statutory consumer protection claims pursuant to consumer protection laws of the states of residence of Class Members identified below to the extent they are not in true conflict with the laws of California, Florida, Illinois, New York, Ohio, Pennsylvania, and Texas.

228. The following consumer protection acts are collectively referred to herein as the “Consumer Protection Acts,” all of which were enacted and designed to protect consumers against unlawful, fraudulent, and/or unfair business acts and practices.

- a. ALA. CODE § 8-19-1 *et seq.* (Alabama);
- b. ALASKA STAT. ANN. § 45.50.471 *et seq.* (Alaska);
- c. ARIZ. REV. STAT. ANN. § 44-1521 *et seq.* (Arizona);
- d. ARK. CODE ANN. § 4-88-101 *et seq.* (Arkansas);
- e. CAL. CIV. CODE § 1750 *et seq.* (California);
- f. COLO. REV. STAT. ANN. § 6-1-101 *et seq.* (Colorado);
- g. CONN. GEN. STAT. ANN. § 42-110a *et seq.* (Connecticut);
- h. DEL. CODE ANN. tit. 6, § 2511 *et seq.* (Delaware);
- i. D.C. CODE ANN. § 28-3901 *et seq.* (District of Columbia);
- j. FLA. STAT. ANN. § 501.201 *et seq.* (Florida);
- k. GA. CODE ANN. § 10-1-370 *et seq.* and GA. CODE ANN. § 10-1-390 *et seq.* (Georgia);
- l. HAW. REV. STAT. ANN. § 480-1 *et seq.* and HAW. REV. STAT. ANN. § 481A-1 *et seq.* (Hawaii);

- 1 m. IDAHO CODE ANN. § 48-601 *et seq.* (Idaho);
- 2 n. 815 ILCS 505/1 *et seq.* (Illinois);
- 3 o. IND. CODE ANN. § 24-5-0.5-1 *et seq.* (Indiana);
- 4 p. IOWA CODE 714H.1, *et seq.* (Iowa);
- 5 q. KAN. STAT. ANN. § 50-623 *et seq.* (Kansas);
- 6 r. KY. REV. STAT. ANN. § 367.110 *et seq.* (Kentucky);
- 7 s. LA. STAT. ANN. § 51:1401 *et seq.* (Louisiana);
- 8 t. MASS. GEN. LAWS, Ch. 93A (Massachusetts)
- 9 u. ME. REV. STAT. tit. 5, § 205-A *et seq.* (Maine);
- 10 v. MD. CODE ANN., COM. LAW § 13-101 *et seq.* (Maryland);
- 11 w. MICH. COMP. LAWS ANN. § 445.901 *et seq.* (Michigan);
- 12 x. MINN. STAT. ANN. § 325F.68 *et seq.*, MINN. STAT. ANN. § 325D.09 *et seq.*, MINN.
- 13 STAT. ANN. § 325D.43 *et seq.*, and MINN. STAT. ANN. § 325F.67 (Minnesota);
- 14 y. MISS. CODE ANN. § 75-24-1 *et seq.* (Mississippi);
- 15 z. MO. ANN. STAT. § 407.010 *et seq.* (Missouri);
- 16 aa. MONT. CODE ANN. § 30-14-101 *et seq.* (Montana);
- 17 bb. NEB. REV. STAT. ANN. § 59-1601 *et seq.* (Nebraska);
- 18 cc. NEV. REV. STAT. ANN. § 41.600 and NEV. REV. STAT. ANN. § 598.0903 *et seq.*
- 19 (Nevada);
- 20 dd. N.H. REV. STAT. ANN. § 358-A:1 *et seq.* (New Hampshire);
- 21 ee. N.J. STAT. ANN. § 56:8-1 *et seq.* (New Jersey);
- 22 ff. N.M. STAT. ANN. § 57-12-1 *et seq.* (New Mexico);
- 23 gg. N.Y. GEN. BUS. LAW. § 349 *et seq.* (New York);
- 24 hh. N.C. GEN. STAT. ANN. § 75-1 *et seq.* (North Carolina);
- 25 ii. N.D. CENT. CODE ANN. § 51-15-01 *et seq.* (North Dakota);
- 26 jj. OHIO REV. CODE ANN. § 1345.01 *et seq.* (Ohio);
- 27 kk. OKLA. STAT. ANN. tit. 15, § 751 *et seq.* (Oklahoma);
- 28 ll. OR. REV. STAT. ANN. § 646.605 *et seq.* (Oregon);

- mm. 73 PA. STAT. ANN. § 201-1 *et seq.* (Pennsylvania);
- nn. R.I. GEN. LAWS ANN. § 6-13.1-1 *et seq.* (Rhode Island);
- oo. S.C. CODE ANN. § 39-5-10 *et seq.* (South Carolina);
- pp. S.D. CODIFIED LAWS § 37-24-1 *et seq.* (South Dakota);
- qq. TENN. CODE ANN. § 47-18-101 *et seq.* (Tennessee);
- rr. TEX BUS. & COM. CODE § 17.41, *et seq.* (Texas);
- ss. UTAH CODE ANN. § 13-11-1 *et seq.* (Utah);
- tt. VT. STAT. ANN. tit. 9, § 2451 *et seq.* (Vermont);
- uu. VA. CODE ANN. § 59.1-196 *et seq.* (Virginia);
- vv. WASH. REV. CODE ANN. § 19.86.010 *et seq.* (Washington);
- ww. W.VA. CODE ANN. § 46A-6-101 *et seq.* (West Virginia);
- xx. WIS. STAT. ANN. § 100.20 (Wisconsin); and
- yy. WYO. STAT. ANN. § 40-12-101 *et seq.* (Wyoming)

229. Apple has engaged in deception, fraud, unfair practices, and concealment by its conduct and omissions described above, and by knowingly and intentionally concealing from Plaintiffs and all Class Members the existence of the Audio Defect (and the costs and diminished value of the AirPods Pro Gen 1 as a result of Apple's conduct). Accordingly, Apple engaged in unfair or deceptive acts or practices as defined in the above Consumer Protection Acts, including: representing (through its misrepresentation of the AirPods Pro Gen 1 functionality and concealment of and failure to disclose the Audio Defect) that the AirPods Pro Gen 1 have characteristics, uses, benefits, and qualities which they do not have; representing (through its misrepresentation of the AirPods Pro Gen 1's functionality and concealment of and failure to disclose the Audio Defect) that the AirPods Pro Gen 1 are of a particular standard and quality when they are not; advertising the AirPods Pro Gen 1 with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

230. The facts misrepresented, concealed, or not disclosed by Apple to Plaintiffs and Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase Apple's AirPods Pro Gen 1 or pay a lesser price. Had Apple disclosed the Audio Defect in its ubiquitous first generation AirPods Pro Gen 1 advertising or through its Apple Stores

1 or authorized retailers, Plaintiffs and other Class Members would have learned of the Audio Defect. Had
2 Plaintiffs and other Class Members known about the Audio Defect, they would not have purchased the
3 AirPods Pro Gen 1 or would have paid less for them.

4 231. Plaintiffs and all Class Members were injured as a result of Apple's conduct in that they
5 purchased AirPods Pro Gen 1 that were defective, overpaid for their AirPods Pro Gen 1 and did not
6 receive the benefit of their bargain, and their AirPods Pro Gen 1 have suffered a diminution in value.
7 These injuries are the direct and natural consequence of Apple's omissions regarding the functionality of
8 and the Audio Defect in its AirPods Pro Gen 1 as set forth in this Complaint and were material and likely
9 to deceive a reasonable consumer, examples of which include, but are not limited to, Apple's statements
10 regarding the defective AirPods Pro Gen 1's usefulness and functionality as headphone, particularly in
11 terms of the AirPods Pro Gen 1's advertised ability to only let in wanted sounds. By omitting or
12 concealing information concerning the Audio Defect when making these statements (and others in its
13 ubiquitous advertising and at its authorized retailers), Apple's statements were untrue or misleading.

14 232. At the latest, Apple knew that its AirPods Pro Gen 1 were defective just a few weeks after
15 release, in late October early November 2019, and likely long before.

16 233. The injuries suffered by Plaintiffs and Class Members are greatly outweighed by any
17 potential countervailing benefit to consumers or to competition, nor are they injuries that those Plaintiffs
18 and Class Members should have reasonably avoided.

19 234. The injuries of Plaintiffs and Class Members were proximately caused by Defendant's
20 fraudulent and deceptive business practices, and they are entitled to relief under the above-identified
21 Consumer Protection Acts.

22 235. Apple's conduct in this regard was wanton, willful, outrageous, and in reckless
23 indifference to the rights of Plaintiffs and other Class Members and, as such, warrants the imposition of
24 punitive damages.

25 **SECOND CLAIM FOR RELIEF**
VIOLATIONS OF THE EXPRESS WARRANTY LAWS OF 50 STATES
26 **(by All Plaintiffs on Behalf of the Nationwide Class)**

27 236. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though
28 fully set forth herein.

237. Plaintiffs bring these breach of express warranty claims pursuant to the laws of the states of residence of Class Members identified below to the extent they are not in true conflict with the laws of California, Florida, Illinois, New York, Ohio, Pennsylvania, and Texas.

238. The following express warranty laws are collectively referred to herein as the “Express Warranty Laws,” all of which provide for damages for breach of affirmative representations that form the basis of the bargain.

239. The Express Warranty Laws include:

- ALA. CODE 1975 § 7-2-313 (Alabama);
- ALASKA STAT. ANN. § 45.02.313 (Alaska)
- ARIZ. REV. STAT. ANN. § 47-2313 (Arizona);
- ARK. CODE ANN. § 4-2-313 (Arkansas);
- CAL. CIV. CODE § 2313 (California);
- COLO. REV. STAT. ANN. § 4-2-313 (Colorado);
- CONN. GEN. STAT. ANN. § 42a-2-313 (Connecticut);
- DEL. CODE ANN. Tit. 6, § 2-313 (Delaware);
- D.C. CODE ANN. § 28:2-313 (District of Columbia);
- FLA. STAT. ANN. § 672.313 (Florida);
- GA. CODE ANN. § 11-2-313 (Georgia);
- HAW. REV. STAT. ANN. § 490:2-313 (Hawaii);
- IDAHO CODE ANN. § 28-2-313 (Idaho);
- 810 ILL. COMP. STAT. § 5/2-313 (Illinois);
- IND. CODE ANN. § 26-1-2-313 (Indiana);
- IOWA CODE ANN. § 554.2313 (Iowa);
- KAN. STAT. ANN § 84-2-313 (Kansas);
- KY. REV. STAT. ANN. § 355.2-313 (Kentucky);
- ME. REV. STAT. ANN. Tit. 11, § 2-313 (Maine);
- MD. COM. LAW CODE § 2-313 (Maryland);
- MASS. GEN. LAWS ANN. Ch. 106, § 2-313 (Massachusetts);

- 1 • MICH. COMP. LAWS § 440.2313 (Michigan);
- 2 • MINN. STAT. ANN. § 336.313 (Minnesota);
- 3 • MISS. CODE ANN. § 75-2-313 (Mississippi);
- 4 • MO. ANN. STAT. § 400.2-313 (Missouri);
- 5 • MONT. CODE ANN. § 30-2-313 (Montana);
- 6 • NEB. REV. STAT. ANN. § 2-313 (Nebraska);
- 7 • NEV. REV. STAT. ANN. § 104.2313 (Nevada);
- 8 • N.H. REV. STAT. ANN. § 382-A:2-313 (New Hampshire);
- 9 • N.J. STAT. ANN. § 12A:2-313 (New Jersey);
- 10 • N.M. STAT. ANN. § 55-2-313 (New Mexico);
- 11 • N.Y. U.C.C. LAW § 2-313 (New York);
- 12 • N.C. GEN. STAT. ANN. § 25-2-313 (North Carolina);
- 13 • N.D. CENT. CODE. ANN. § 41-02-30 (North Dakota);
- 14 • OHIO REV. CODE ANN. § 1302.26 (Ohio);
- 15 • OKLA. STAT. ANN. tit. 12A, § 2-313 (Oklahoma);
- 16 • OR. REV. STAT. ANN. § 72.3130 (Oregon);
- 17 • 13 PA. STAT. AND CONST. STAT. ANN. § 2313 (Pennsylvania);
- 18 • 6A R.I. GEN. LAWS. ANN. § 2-313 (Rhode Island);
- 19 • S.C. CODE ANN. § 36-2-313 (South Carolina);
- 20 • S.D. CODIFIED LAWS § 57A-2-313 (South Dakota);
- 21 • TENN. CODE ANN. § 47-2-313 (Tennessee);
- 22 • TEX. BUS. & COM. CODE ANN. § 2.313 (Texas);
- 23 • UTAH CODE ANN. § 70A-2-313 (Utah);
- 24 • VT. STAT. ANN. tit. 9A, § 2-313 (Vermont);
- 25 • VA. CODE ANN. § 8.2-313 (Virginia);
- 26 • WASH. REV. CODE ANN. § 62A.2-313 (Washington);
- 27 • W. VA. CODE ANN. § 46-2-313 (West Virginia);
- 28 • WIS. STAT. ANN. § 402.313 (Wisconsin); and

- WYO. STAT. ANN. § 34.1-2.313 (Wyoming).

240. Apple expressly warranted that its AirPods Pro Gen 1 would provide “superior sound quality” and a noise cancelling feature—including “Active Noise Cancelling” (“ANC”) to filter out exterior sound and “Transparency” modes to filter out interior sound, while ensuring that desired sound could be heard clearly in both noise cancelling and transparency modes. These descriptions and affirmations of fact or promises became part of the basis of the bargain between Apple and all Plaintiffs and Class Members, thereby giving rise to express warranties by Apple that the AirPods Pro Gen 1 conformed to the descriptions and affirmations of fact or promises.

241. These descriptions and affirmations of fact or promises made by Apple were made to induce Plaintiffs and Class Members to purchase Apple’s AirPods Pro Gen 1.

242. Plaintiffs, in making their purchases of AirPods Pro Gen 1, relied on these descriptions, representations, affirmations of fact, or promises outlined above.

243. In fact, however, Apple’s AirPods Pro Gen 1 did not have superior sound quality and did not provide effective noise cancelling. Instead, the AirPods Pro Gen 1 had “sound issues” caused by an inherent defect in all AirPods Pro Gen 1. Instead of eliminating unwanted sound, the Audio Defect actually produced unwanted sound in the form of crackling and static, thereby decreasing the functionality, usability, and value of Plaintiffs’ and other similarly situated purchasers’ headphones.

244. Plaintiffs and Class Members notified Apple of the breaches within a reasonable time, and/or were not required to do so because affording Apple a reasonable opportunity to cure its breach of warranty would have been futile. Apple also knew of the Audio Defect and yet chose to conceal it by warranting and continuing to advertise the noise cancelling benefits of the AirPods Pro Gen 1, while failing to comply with Apple’s express warranty obligations and misrepresenting and suppressing communication regarding the known sound issues with its AirPods Pro Gen 1, including by, *inter alia*, (a) failing to affirmatively reach out to consumers and notify them of the known defect with their AirPods Pro Gen 1 headphones, while leaving in place form language by which Apple uniformly communicated misrepresentations to consumers regarding their purported rights and responsibilities in connection with any defects they experienced, and which conflicted with Apple’s single buried website discussing the sound issues with Apple’s AirPods Pro Gen 1; (b) suppressing and misrepresenting information regarding

the sound issues including by claiming that it only affected a “small percentage of AirPods Pro,” when in reality Apple knew the sound issues reflected a defect inherent in all AirPods Pro Gen 1; (c) providing consumers with equally defective AirPods Pro Gen 1 as replacements under its one year warranty and purported Service Program; (d) imposing arbitrary and unreasonable conditions on consumers’ ability to obtain refunds or adequate relief for their defective AirPods Pro Gen 1 headphones both through the foregoing conduct, as well as through arbitrary and unreasonable time limitations in its Service Program relating to date of manufacture and date of purchase; and (e) refusing to repair, replace, and/or refund Class Members’ defective AirPods Pro Gen 1 headphones.

245. As a direct and proximate cause of Apple’s breach, Plaintiffs and Class Members bought AirPods Pro Gen 1s that they otherwise would not have bought, overpaid for their AirPods Pro Gen 1s, did not receive the benefit of their bargain, and their AirPods Pro Gen 1s suffered a diminution in value. Plaintiffs and Class Members have also incurred and will continue to incur costs for replacing their AirPods Pro Gen 1s.

246. Plaintiffs and Class Members are entitled to legal and equitable relief against Apple, including damages, consequential damages, specific performance, attorney fees, costs of suit, and other relief as appropriate.

THIRD CLAIM FOR RELIEF
VIOLATIONS OF THE IMPLIED WARRANTY LAWS OF 50 STATES
(by All Plaintiffs on Behalf of the Nationwide Class)

247. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

248. Plaintiffs bring these breach of implied warranty claims pursuant to the laws of the states of residence of Class Members identified below to the extent they are not in true conflict with the laws of California, Florida, Illinois, New York, Ohio, Pennsylvania, and Texas.

249. The following implied warranty laws are collectively referred to herein as the “Implied Warranty Laws,” all of which provide for damages when goods are not merchantable and fit for the ordinary purpose for which they are sold.

250. The Implied Warranty Laws include:

- ALA. CODE 1975 § 7-2-314 *et seq.* (Alabama);

- 1 • ALASKA STAT. ANN. § 45.02.314 *et seq.* (Alaska)
- 2 • ARIZ. REV. STAT. ANN. § 47-2314 *et seq.* (Arizona);
- 3 • ARK. CODE ANN. § 4-2-314 *et seq.* (Arkansas);
- 4 • CAL. CIV. CODE § 2314 *et seq.* (California);
- 5 • COLO. REV. STAT. ANN. § 4-2-314 *et seq.* (Colorado);
- 6 • CONN. GEN. STAT. ANN. § 42a-2-314 *et seq.* (Connecticut);
- 7 • DEL. CODE ANN. Tit. 6, § 2-314 *et seq.* (Delaware);
- 8 • D.C. CODE ANN. § 28:2-314 *et seq.* (District of Columbia);
- 9 • FLA. STAT. ANN. § 672.314 *et seq.* (Florida);
- 10 • GA. CODE ANN. § 11-2-314 *et seq.* (Georgia);
- 11 • HAW. REV. STAT. ANN. § 490:2-314 *et seq.* (Hawaii);
- 12 • IDAHO CODE ANN. § 28-2-314 *et seq.* (Idaho);
- 13 • 810 ILL. COMP. STAT. § 5/2-314 *et seq.* (Illinois);
- 14 • IND. CODE ANN. § 26-1-2-314 *et seq.* (Indiana);
- 15 • IOWA CODE ANN. § 554.2314 *et seq.* (Iowa);
- 16 • KAN. STAT. ANN § 84-2-314 *et seq.* (Kansas);
- 17 • KY. REV. STAT. ANN. § 355.2-314 *et seq.* (Kentucky);
- 18 • LA. REV. STAT. art. 2520 *et seq.* (Louisiana);
- 19 • ME. REV. STAT. ANN. Tit. 11, § 2-314 *et seq.* (Maine);
- 20 • MD. COM. LAW CODE § 2-314 *et seq.* (Maryland);
- 21 • MASS. GEN. LAWS ANN. Ch. 106, § 2-314 *et seq.* (Massachusetts);
- 22 • MICH. COMP. LAWS § 440.2314 *et seq.* (Michigan);
- 23 • MINN. STAT. ANN. § 336.314 *et seq.* (Minnesota);
- 24 • MISS. CODE ANN. § 75-2-314 *et seq.* (Mississippi);
- 25 • MO. ANN. STAT. § 400.2-314 *et seq.* (Missouri);
- 26 • MONT. CODE ANN. § 30-2-314 *et seq.* (Montana);
- 27 • NEB. REV. STAT. ANN. § 2-314 *et seq.* (Nebraska);
- 28 • NEV. REV. STAT. ANN. § 104.2314 *et seq.* (Nevada);

- 1 • N.H. REV. STAT. ANN. § 382-A:2-314 *et seq.* (New Hampshire);
- 2 • N.J. STAT. ANN. § 12A:2-314 *et seq.* (New Jersey);
- 3 • N.M. STAT. ANN. § 55-2-314 *et seq.* (New Mexico);
- 4 • N.Y. U.C.C. LAW § 2-314 *et seq.* (New York);
- 5 • N.C. GEN. STAT. ANN. § 25-2-314 *et seq.* (North Carolina);
- 6 • N.D. CENT. CODE. ANN. § 41-02-31 *et seq.* (North Dakota);
- 7 • OHIO REV. CODE ANN. § 1302.27 *et seq.* (Ohio);
- 8 • OKLA. STAT. ANN. tit. 12A, § 2-314 *et seq.* (Oklahoma);
- 9 • OR. REV. STAT. ANN. § 72.3140 *et seq.* (Oregon);
- 10 • 13 PA. STAT. AND CONST. STAT. ANN. § 2314 *et seq.* (Pennsylvania);
- 11 • 6A R.I. GEN. LAWS. ANN. § 2-314 *et seq.* (Rhode Island);
- 12 • S.C. CODE ANN. § 36-2-314 *et seq.* (South Carolina);
- 13 • S.D. CODIFIED LAWS § 57A-2-314 *et seq.* (South Dakota);
- 14 • TENN. CODE ANN. § 47-2-314 *et seq.* (Tennessee);
- 15 • TEX. BUS. & COM. CODE ANN. § 2.314 *et seq.* (Texas);
- 16 • UTAH CODE ANN. § 70A-2-314 *et seq.* (Utah);
- 17 • VT. STAT. ANN. tit. 9A, § 2-314 *et seq.* (Vermont);
- 18 • VA. CODE ANN. § 8.2-314 *et seq.* (Virginia);
- 19 • WASH. REV. CODE ANN. § 62A.2-314 *et seq.* (Washington);
- 20 • W. VA. CODE ANN. § 46-2-314 *et seq.* (West Virginia);
- 21 • WIS. STAT. ANN. § 402.314 *et seq.* (Wisconsin); and
- 22 • WYO. STAT. ANN. § 34.1-2.314 *et seq.* (Wyoming).

23 251. Apple provided Plaintiffs and all Class Members with an implied warranty that the
 24 AirPods Pro Gen 1 and any parts thereof are merchantable and fit for the ordinary purposes for which
 25 they were sold—as listening devices capable of delivering intelligible audio without static or other
 26 interference, as well as having noise cancelling functionality. However, the AirPods Pro Gen 1 are not
 27 fit for their ordinary purpose as headphones or as headphones with the particular purpose of noise
 28 cancelling functionality because, *inter alia*, they suffer from an inherent Audio Defect at the point of sale

that causes “sound issues” as described herein—including, crackling or static sounds, loss of bass sound, increase in background sounds, or other sound issues due to the noise cancelling and other sound features not working as expected.

252. The Audio Defect, which is present at the point of sale (and remains latent until manifestation), renders the AirPods Pro Gen 1 incapable of functioning as headphones at all—let alone as headphones capable of noise cancelling or transparency modes. As such, the AirPods Pro Gen 1 were not merchantable and not fit for their ordinary purpose for which they were sold.

253. Apple impliedly warranted that the AirPods Pro Gen 1 were of merchantable quality and fit for audio use, as well as for the particular use as noise cancelling headphones. This implied warranty included, among other things, a warranty that the AirPods Pro Gen 1 manufactured, supplied, distributed, and/or sold by Apple were reliable and would not experience premature failure or “sound issues” when consumers used them in a reasonable and foreseeable manner.

254. Contrary to Apple’s applicable implied warranties, the AirPods Pro Gen 1 at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and Class Members with reliable headphones, much less the particular purpose of providing noise cancelling functionality in Active Noise Cancelling and Transparency Modes.

255. Apple’s actions, as complained of herein, breached the implied warranty that the headphones were of merchantable quality and fit for the ordinary use for which they were sold.

FOURTH CLAIM FOR RELIEF
UNJUST ENRICHMENT

**(By All Plaintiffs on Behalf of the Nationwide Class
or, alternatively, by Plaintiffs on behalf of the California, Florida, Illinois, New York,
Ohio, Pennsylvania, and Texas Classes)**

256. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

257. Plaintiffs and the Class Members conferred a benefit on Apple by purchasing the AirPods Pro Gen 1.

258. Apple had knowledge that this benefit was conferred upon it.

259. Apple retained that benefit under circumstances that make it unjust and inequitable for Apple to retain it without paying Plaintiffs and members of the Classes the value thereof. Specifically,

because of its wrongful acts and omissions, Apple charged a higher price for the AirPods Pro Gen 1 than the AirPods Pro Gen 1's true value given the Audio Defect, such that Apple obtained money which rightfully belongs to Plaintiffs and the Class Members.

260. Apple has been unjustly enriched at the expense of Plaintiffs and the Class and its retention of this benefit under the circumstances would be inequitable.

261. Plaintiffs seek an order requiring Apple to make restitution to them and the other members of the Class.

CALIFORNIA STATE LAW CLAIMS

FIFTH CLAIM FOR RELIEF BREACH OF EXPRESS WARRANTY UNDER CALIFORNIA LAW Cal. Unif. Com. Code § 2313 (By Plaintiffs Camacho and Schaefer on behalf of the California Class)

262. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

263. § 2313 of the California Uniform Commercial Code provides that:

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

264. Apple expressly warranted that its AirPods Pro Gen 1 would provide "superior sound quality" and a noise cancelling feature—including "Active Noise Cancelling" ("ANC") to filter out exterior sound and "Transparency" modes to filter out interior sound, while ensuring that desired sound could be heard clearly in both noise cancelling and transparency modes. These descriptions and affirmations of fact or promises became part of the basis of the bargain between Apple and all Plaintiffs

and Class Members, thereby giving rise to express warranties by Apple that the AirPods Pro Gen 1 conformed to the descriptions and affirmations of fact or promises.⁴⁶

265. These descriptions and affirmations of fact or promises made by Apple was made to induce Plaintiffs and Class Members to purchase Apple's AirPods Pro Gen 1.

266. Plaintiffs Camacho and Schaefer, in making their purchases of AirPods Pro Gen 1, relied on these descriptions, representations, affirmations of fact, or promises outlined above.

267. In fact, however, Apple's AirPods Pro Gen 1 did not have superior sound quality and did not provide effective noise cancelling. Instead, the AirPods Pro Gen 1 had "sound issues" caused by an inherent defect in all AirPods Pro Gen 1. Instead of eliminating unwanted sound, the Audio Defect actually produced unwanted sound in the form of crackling and static, thereby decreasing the functionality, usability, and value of Plaintiffs' and other similarly situated purchasers' headphones.

268. Plaintiffs and Class Members notified Apple of the breaches within a reasonable time, and/or were not required to do so because affording Apple a reasonable opportunity to cure its breach of warranty would have been futile.

269. Apple also knew of the Audio Defect and yet chose to conceal it by warranting and continuing to advertise the noise cancelling benefits of the AirPods Pro Gen 1, while failing to comply with Apple's express warranty obligations and misrepresenting and suppressing communication regarding the known sound issues with its AirPods Pro Gen 1, including by, *inter alia*, (a) failing to affirmatively reach out to consumers and notify them of the known defect with their AirPods Pro Gen 1 headphones, while leaving in place form language by which Apple uniformly communicated misrepresentations to consumers regarding their purported rights and responsibilities in connection with any defects they experienced, and which conflicted with Apple's single buried website discussing the sound issues with Apple's AirPods Pro Gen 1; (b) suppressing and misrepresenting information regarding the sound issues including by claiming that it only affected a "small percentage of AirPods Pro," when in reality Apple knew the sound issues reflected a defect inherent in all AirPods Pro Gen 1; (c) providing

⁴⁶ Apple's one-year manufacturing warranty is inapplicable to the defect at issue as the defect at issue is inherent in every AirPods Pro Gen 1 earpiece—and does not involve the occasional problem with materials and workmanship covered by Apple's one-year warranty. *See also supra* ¶¶25-29.

consumers with equally defective AirPods Pro Gen 1 as replacements under its one year warranty and purported Service Program; (d) imposing arbitrary and unreasonable conditions on consumers' ability to obtain refunds or adequate relief for their defective AirPods Pro Gen 1 headphones both through the foregoing conduct, as well as through arbitrary and unreasonable time limitations in its sound Service Program relating to date of manufacture and date of purchase; and (e) refusing to repair, replace, and/or refund Class Members' defective AirPods Pro Gen 1 headphones.

270. As a direct and proximate cause of Apple's breach, Plaintiffs and Class Members bought AirPods Pro Gen 1s that they otherwise would not have bought, overpaid for their AirPods Pro Gen 1s, did not receive the benefit of their bargain, and their AirPods Pro Gen 1s suffered a diminution in value. Plaintiffs and Class Members have also incurred and will continue to incur costs for replacing their AirPods Pro Gen 1s.

271. Plaintiffs and Class Members are entitled to legal and equitable relief against Apple, including damages, consequential damages, specific performance, attorney fees, costs of suit, and other relief as appropriate.

SIXTH CLAIM FOR RELIEF
BREACH OF IMPLIED WARRANTY UNDER CALIFORNIA LAW
Cal. Unif. Com. Code §§ 2314-2315
(By Plaintiffs Camacho and Schaefer on behalf of the California Class)

272. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

273. Apple provided Plaintiffs and all Class Members with an implied warranty that the AirPods Pro Gen 1 and any parts thereof are merchantable and fit for the ordinary purposes for which they were sold—as listening devices capable of delivering intelligible audio without static or other interference. Apple also impliedly warranted that AirPods Pro Gen 1 were suited for the particular purpose of noise cancelling in ANC and Transparency modes—a new functionality it had specialized and expert knowledge about that Plaintiffs did not have.

274. However, the AirPods Pro Gen 1 are not fit for their ordinary purpose as headphones or as headphones with noise cancelling functionality because, *inter alia*, they suffer from an inherent Audio Defect at the time of sale that causes them to malfunction. Specifically, the Audio Defect causes “sound issues” as described herein—including, crackling or static sounds, loss of bass sound, increase in

1 background sounds, or other sound issues due to the noise cancelling and other sound features not
2 working as expected.

3 275. The Audio Defect, which is present at the point of sale (and remains latent until
4 manifestation), renders the AirPods Pro Gen 1 incapable of functioning as headphones at all—let alone
5 as headphones capable of noise cancelling or transparency modes. As such, the AirPods Pro Gen 1 were
6 not merchantable and not fit for their ordinary purpose as headphones, much less as headphones with
7 noise cancelling functionality.

8 276. Apple impliedly warranted that the AirPods Pro Gen 1 were of merchantable quality and
9 fit for audio use, as well as for use as noise cancelling headphones. This implied warranty included,
10 among other things, a warranty that the AirPods Pro Gen 1 manufactured, supplied, distributed, and/or
11 sold by Apple were reliable and would not experience premature failure or “sound issues” when
12 consumers used them in a reasonable and foreseeable manner.

13 277. Contrary to the applicable implied warranties, the AirPods Pro Gen 1 at the time of sale
14 and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and Class
15 Members with reliable headphones, much less ones with the particular purpose of noise cancelling
16 functionality.

17 278. The AirPods Pro Gen 1 would not pass without objection in the marketplace had Apple
18 made their inherent defect known as they suffer from sound issues, and thus were not of fair average
19 quality within the description, are not fit for the ordinary purpose as headphones, and are not permitted
20 variations of quality.

21 279. Apple had reason to know that Plaintiffs and similarly situated consumers would rely on
22 the seller’s skill or judgment regarding the sound quality of headphones, and the ability of headphones
23 to perform noise-cancelling functions in particular.

24 280. Any attempt by Apple to disclaim or limit the implied warranty of merchantability vis-à-
25 vis consumers would be unconscionable and unenforceable because Apple knowingly sold a defective
26 product without informing consumers about the defect. Any time limits contained in Apple’s warranty
27 periods would likewise be unconscionable and inadequate to protect Plaintiff and the other California
28 Class Members. Among other things, Plaintiff and the other California Class Members had no meaningful

choice in determining any time limitations, the terms of which unreasonably favored Apple. A gross disparity in bargaining power existed between Apple and Plaintiff and the other California Class Members, and Apple knew of the defect at the time of sale.

281. Apple's actions, as complained of herein, breached the implied warranty that the headphones were of merchantable quality and fit for the ordinary use for which they were sold.

282. As a direct and proximate result of Apple's breach of the implied warranty of merchantability, Plaintiff and the other California Class Members have been damaged in an amount to be proven at trial, including, but not limited to, benefit-of-the-bargain damages, restitution, and/or diminution of value.

SEVENTH CLAIM FOR RELIEF
VIOLATIONS OF THE SONG-BEVERLY CONSUMER WARRANTY ACT
Cal. Civ. Code § 1790, *et seq.*
(By Plaintiffs Camacho and Schaefer on behalf of the California Class)

283. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

284. Plaintiffs bring this claim on behalf of themselves and on behalf of the California Class Members against Apple.

285. At all relevant times, Apple was the manufacturer, distributor, warrantor and/or seller of the AirPods Pro Gen 1. Apple knew or should have known of the specific use for which the AirPods Pro Gen 1 were purchased.

286. Apple provided Plaintiffs and Class Members with an implied warranty that the AirPods Pro Gen 1, and any parts thereof, are merchantable and fit for the ordinary purposes for which they were sold—as listening devices capable of delivering intelligible audio without static or other interference. Apple also impliedly warranted that AirPods Pro Gen 1 were suited for the particular purpose of noise cancelling in ANC and Transparency modes—a new functionality it had specialized and expert knowledge about that Plaintiffs did not have.

287. The AirPods Pro Gen 1, however, are not fit for their ordinary purpose because, *inter alia*, the AirPods Pro Gen 1 suffer from an inherent defect at the time of sale that causes them to malfunction. Specifically, the Audio Defect causes the AirPods Pro Gen 1 to experience “sound issues”—including,

1 crackling or static sounds, loss of bass sound, increase in background sounds, or other sound issues due
2 to the noise cancelling and other sound features not working as expected.

3 288. The Audio Defect, which is present at the point of sale (and remains latent until
4 manifestation), renders the AirPods Pro Gen 1 incapable of functioning as headphones at all—let alone
5 as headphones capable of noise cancelling or transparency modes.

6 289. The AirPods Pro Gen 1 are not fit for the purpose of use as headphones or as headphones
7 with noise cancelling capabilities because of the Audio Defect that causes “sound issues.”

8 290. Apple impliedly warranted that the AirPods Pro Gen 1 were of merchantable quality and
9 fit for such use. This implied warranty included, *inter alia*, a warranty that the AirPods Pro Gen 1
10 manufactured, supplied, distributed, and/or sold by Apple were reliable for use as headphones and would
11 not experience premature failure or “sound issues” when consumers used them in a reasonable and
12 foreseeable manner.

13 291. Contrary to Apple’s implied warranties, the AirPods Pro Gen 1 at the time of sale and
14 thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and Class Members
15 with reliable headphones, much less ones with noise cancelling functionality.

16 292. The AirPods Pro Gen 1 would not pass without objection in the marketplace had Apple
17 made their inherent defect known as they suffer from sound issues, and thus were not of fair average
18 quality within the description, are not fit for the ordinary purpose as headphones, and are not permitted
19 variations of quality.

20 293. Apple had reason to know that Plaintiffs and similarly situated consumers would rely on
21 the seller’s skill or judgment regarding the sound quality of headphones, and the ability of headphones
22 to perform noise-cancelling functions in particular.

23 294. Any attempt by Apple to disclaim or limit the implied warranty of merchantability vis-à-
24 vis consumers would be unconscionable and unenforceable because Apple knowingly sold a defective
25 product without informing consumers about the defect. Any time limits contained in Apple’s warranty
26 periods would likewise be unconscionable and inadequate to protect Plaintiff and the other California
27 Class Members. Among other things, Plaintiff and the other California Class Members had no meaningful
28 choice in determining any time limitations, the terms of which unreasonably favored Apple. A gross

disparity in bargaining power existed between Apple and Plaintiff and the other California Class Members, and Apple knew of the defect at the time of sale.

295. Apple's actions, as complained of herein, thus breached the Song-Beverly Consumer Warranty Act as the AirPods Pro Gen 1s were not of merchantable quality or fit for the ordinary use for which they were sold.

296. As a direct and proximate result of Apple's breach of the implied warranty of merchantability, Plaintiff and the other Florida Class Members have been damaged in an amount to be proven at trial, including, but not limited to, benefit-of-the-bargain damages, restitution, and/or diminution of value.

EIGHTH CLAIM FOR RELIEF
VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT ("CLRA")
Cal. Civ. Code § 1750, *et seq.*
(By Plaintiffs Camacho and Schaefer on behalf of the California Class)

297. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

298. Apple is a person as that term is defined in California Civil Code § 1761(c).

299. Plaintiffs and the Class are "consumers" as that term is defined in California Civil Code § 1761(d).

300. Apple engaged in unfair and deceptive acts in violation of the CLRA by the practices described above, and by knowingly and intentionally concealing from Plaintiffs and Class Members that the AirPods Pro Gen 1 are inherently defective. These acts and practices violate, at a minimum, the following sections of the CLRA:

- (a)(2) Misrepresenting the source, sponsorship, approval or certification of goods or services;
- (a)(5) Representing that goods or services have sponsorships, characteristics, uses, benefits or quantities which they do not have, or that a person has a sponsorship, approval, status, affiliation or connection which he or she does not have;
- (a)(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and
- (a)(9) Advertising goods and services with the intent not to sell them as advertised.

Cal. Civ. Code § 1770.

1 301. Apple’s unfair or deceptive acts or practices occurred repeatedly in Apple’s trade or
2 business and were capable of deceiving a substantial portion of the purchasing public.

3 302. Apple knew or should have known of the Audio Defect due to its extensive internal, pre-
4 release testing.

5 303. Throughout the class period, Apple knew or should have known that the AirPods Pro Gen
6 1 were defective because of known “sound issues.”

7 304. Apple knew or should have known that its AirPods Pro Gen 1 were not fit for their
8 intended use and would not provide consumers with the high-quality, immersive, pure, incredibly clear
9 sound experience that it promised.

10 305. In failing to disclose the Audio Defect at the time of sale, Apple has knowingly and
11 intentionally concealed material facts.

12 306. The facts misrepresented, concealed or not disclosed by Apple to Plaintiffs and the Class
13 Members are material in that a reasonable consumer would have considered them to be important in
14 deciding whether to purchase Apple’s AirPods Pro Gen 1 or pay a lesser price.

15 307. The misrepresented, concealed or omitted facts concerning the Audio Defect are also
16 material because they concern central functions of the product (*e.g.*, the AirPods Pro Gen 1’s superior
17 sound quality and ability to be used effectively in either noise cancelling or transparency modes).

18 308. Finally, the facts concerning the Audio Defect that Apple concealed or omitted from its
19 representations to customers are also material because they contradict affirmative representations about
20 Apple’s audio quality and functionality, as well as its ability to function as quality headphones in either
21 noise cancelling or transparency modes.

22 309. Had Plaintiffs and the Class known about the AirPods Pro Gen 1’s Audio Defect that
23 causes sound issues to manifest, they would not have purchased the AirPods Pro Gen 1 or would have
24 paid less for them.

25 310. Plaintiffs plausibly would have learned of the Audio Defect if Apple had disclosed it
26 through its ubiquitous advertising or to the sales representatives at Apple Stores, authorized retailers, and
27 carrier service retail locations. Plaintiffs and the other Class members’ injuries were proximately caused
28 by Apple’s fraudulent and deceptive business practices.

311. Apple's one-year manufacturing warranty is inapplicable to the defect at issue as the defect at issue is inherent in every AirPods Pro Gen 1 earpiece—and does not involve the occasional problem with materials and workmanship covered by Apple's one-year warranty.⁴⁷ Indeed, AirPods Gen 1 have an inherent defect at the time of purchase, which consumers had no reason to suspect as Apple did not provide that information at the point of purchase. Here, since the AirPods Pro Gen 1 were inherently defective at purchase, they were worth less than Plaintiffs and similarly situated class members paid at the time of purchase. Moreover, if Apple's one-year limited warranty did apply, which it does not, it would not alleviate the harm suffered because at best under the one-year limited warranty Apple would provide a replacement product—and here such replacement would not resolve Plaintiffs' or class members' claims as any replacement would suffer from the same defect as the original device.

312. In fact, because AirPods Pro Gen 1 contain an inherent defect known to create sound issues, many consumers have had multiple devices with sound issues after replacement from Apple under its Service Program or under its one-year warranty. As a result, neither Apple's Service Program nor its one-year warranty address or resolve Plaintiffs' and class members alleged harm. Apple has made no appropriate correction because the inherently defective devices cannot be repaired or replaced because such repair and replacement would not resolve the inherent defect responsible for the sound quality issues that Apple admits exist with Apple AirPods Gen 1. It is also irrelevant that Apple extended its Service Program because the Service Program only allowed for replacement with a device with the same inherent defect.

313. Plaintiffs had no basis to discover the inherent defect in AirPods Pro Gen 1 because Apple did not indicate that the AirPods Pro Gen 1 were defective at point of purchase, and did not send Plaintiffs or Class Members any notice despite having the ability to contact most purchasers through their Apple accounts or other means.⁴⁸ Apple did not do any publication notice beyond a passive web page that required consumers to conduct their own research to find. That passive web support page also only applied to devices manufactured during a certain time period when the defect is inherent to all AirPods

⁴⁷ <https://perma.cc/8AM4-KJ3Z> (last visited Oct. 23, 2024).

⁴⁸ <https://perma.cc/H6JM-TTB3> (Last visited Oct. 23, 2024).

Pro Gen 1 headphones. As such, there is no reason that Plaintiffs or Class Members should have discovered the defect sooner. Also, even if Plaintiffs and Class Members noticed sound issues it was still unreasonable for them to understand that the sound issues resulted from an inherent defect in the AirPods Pro Gen 1 that existed since the time of purchase, or that the problems with the AirPods Pro Gen 1 could serve as a legal basis for filing suit against Apple.

314. Apple has been provided notice of its violations of the CLRA pursuant to California Civil Code § 1782(a), but Plaintiffs have not received their requested relief. *See* Exhibit 3. Therefore, Plaintiffs seek injunctive relief, damages, and reasonable attorney's fees under the CLRA. Additionally, Plaintiffs have attached a Declaration of Venue as to their CLRA claims as required under California Civil Code § 1780. *See* Exhibit 4 (Declaration of Venue).

315. Pursuant to California Civil Code § 1780, Plaintiffs seek an order enjoining Apple from the unlawful practices described above and a declaration that Apple's conduct violates the Consumers Legal Remedies Act.

316. Under the CLRA, Plaintiffs and the other Class Members are entitled to and therefore seek equitable relief as well as actual and punitive damages and attorneys' fees and costs.

NINTH CLAIM FOR RELIEF
VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW ("UCL")
Cal. Bus. & Prof. Code § 17200, *et seq.*
(By Plaintiffs Camacho and Schaefer on behalf of the California Class)

317. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

318. The California Unfair Competition Law ("UCL") prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

319. Apple has engaged in unfair competition and unfair, unlawful or fraudulent business practices by the conduct, statements, and omissions described above, and by knowingly and intentionally concealing from Plaintiffs and the Class Members the Audio Defect (and the costs and diminished value of the AirPods Pro Gen 1 as a result of Apple's conduct). Apple knew or reasonably should have known about the Audio Defect throughout the class period. Apple should have disclosed information concerning

the Audio Defect in its ubiquitous advertising and through its authorized retailers. Apple was in a superior position to know the true facts related to the Audio Defect, and Plaintiffs and Class Members could not reasonably be expected to learn or discover the true facts related to the Audio Defect.

320. These acts and practices have deceived Plaintiffs and are likely to deceive the public. In failing to disclose the Audio Defect, while misrepresenting and suppressing other material facts from Plaintiffs and the Class Members, Apple violated the UCL, and caused injuries to Plaintiffs and the Class Members. The misrepresentations, omissions, and acts of concealment by Apple pertained to information that was material to Plaintiffs and the Class Members, as it would have been to all reasonable consumers. Had Apple disclosed the Audio Defect in its ubiquitous AirPods Pro Gen 1 advertising or through its Apple Stores or authorized retailers, Plaintiffs and Class Members would have learned of the Audio Defect and would have acted differently. Had Plaintiffs and Class Members known about the Audio Defect, they would not have purchased the AirPods Pro Gen 1 headphones or would have paid less for them.

321. The injuries suffered by Plaintiffs and Class Members are greatly outweighed by any potential countervailing benefit to consumers or to competition, nor are they injuries that Plaintiffs and Class Members should have reasonably avoided.

322. Apple's acts and practices are unlawful because they violate California Civil Code §§ 1668, 1709, 1710, and 1750, *et seq.*, and California Commercial Code § 2313.

323. Plaintiffs seek to enjoin further unlawful, unfair and/or fraudulent acts or practices by Apple, to obtain restitutionary disgorgement of all monies and revenues generated as a result of such practices, and all other relief allowed under California Business & Professions Code § 17200.

TENTH CLAIM FOR RELIEF
VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW ("FAL")
Cal. Bus. & Prof. Code § 17500, *et seq.*
(By Plaintiffs Camacho and Schaefer on behalf of the California Class)

324. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

325. The California False Advertising Law ("FAL") states: "It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of real or personal property . . . to

1 induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made
2 or disseminated . . . from this state before the public in any state, in any newspaper or other publication,
3 or any advertising device, . . . or in any other manner or means whatever, including over the Internet, any
4 statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable
5 care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

6 326. Apple caused to be made or disseminated throughout the United States, through
7 advertising, marketing and other publications, statements that were untrue or misleading, and which were
8 known, or which by the exercise of reasonable care should have been known to Apple, to be untrue and
9 misleading to consumers, including Plaintiffs and the other Class Members.

10 327. Apple has violated the FAL because the omissions regarding the functionality of and the
11 Audio Defect in its AirPods Pro Gen 1 as set forth in this Complaint were material and likely to deceive
12 a reasonable consumer. Examples of which include, but are not limited to, Apple’s statements regarding
13 the Defective AirPods Pro Gen 1 usefulness and functionality as headphones with superior sound quality
14 and noise cancelling capabilities, which are false misleading and confusing to the public because, in fact,
15 AirPods Pro Gen 1 contained an Audio Defect that caused the headphones to experience “sound issues.”
16 By misrepresenting, omitting or concealing information concerning the Audio Defect when making these
17 statements (and others in its ubiquitous advertising and at its authorized retailers), Apple’s statements
18 were untrue or misleading.

19 328. Plaintiffs and the other Class Members have suffered an injury in fact, including the loss
20 of money or property, as a result of Apple’s unfair, unlawful, and/or deceptive practices. In purchasing
21 their AirPods Pro Gen 1, Plaintiffs and the other Class Members relied on the omissions of Apple with
22 respect to the reliability and functionality of the AirPods Pro. Apple’s representations were untrue
23 because the AirPods Pro Gen 1 were manufactured and sold with the Audio Defect. Had Plaintiffs and
24 the other Class Members known this, they would not have purchased their AirPods Pro Gen 1 and/or paid
25 as much for them. Accordingly, Plaintiffs and the other Class Members overpaid for their AirPods Pro
26 Gen and did not receive the benefit of their bargain.

27 329. All of the wrongful conduct alleged herein occurred in the conduct of Apple’s business.
28

330. Plaintiffs, individually and on behalf of the other Class Members, request that this Court enter such orders or judgments as may be necessary to restore to Plaintiffs and the other Class Members any money Apple acquired by unfair competition, including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

FLORIDA STATE LAW CLAIMS

ELEVENTH CLAIM FOR RELIEF
BREACH OF EXPRESS WARRANTY UNDER FLORIDA LAW
F.S.A. § 672.313
(Plaintiff Nykerk on Behalf of the Florida Class)

331. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

332. § 672.313 of the Florida Commercial Relations Code provides that:

(a) Express warranties by the seller are created as follows:

(1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that the seller have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.

333. Apple expressly warranted that AirPods Pro Gen 1 provide “superior sound quality” and a noise cancelling feature—including “Active Noise Cancelling” (“ANC”) to filter out exterior sound and “Transparency” modes to filter out interior sound, while ensuring that desired sound could be heard clearly in both noise cancelling and transparency modes. These descriptions and affirmations of fact or promises became part of the basis of the bargain between Apple and all Plaintiffs and Class Members,

1 thereby giving rise to express warranties by Apple that the AirPods Pro Gen 1 conformed to the
2 descriptions and affirmations of fact or promises.⁴⁹

3 334. These descriptions and affirmations of fact or promises made by Apple was made to
4 induce Plaintiff and Class Members to purchase Apple's AirPods Pro Gen 1.

5 335. Plaintiff Nykerk, in making his purchase of AirPods Pro Gen 1, relied on these
6 descriptions, representations, affirmations of fact, or promises outlined above.

7 336. In fact, however, Apple's AirPods Pro Gen 1 did not have superior sound quality and did
8 not provide effective noise cancelling. Instead, the AirPods Pro Gen 1 had "sound issues" caused by an
9 inherent defect in all AirPods Pro Gen 1. Instead of eliminating unwanted sound, the Audio Defect
10 actually produced unwanted sound in the form of crackling and static, thereby decreasing the
11 functionality, usability, and value of Plaintiff Nykerk's and other similarly situated purchasers'
12 headphones.

13 337. Apple has been notified of the breaches within a reasonable time, and/or Plaintiff was not
14 required to do so because affording Apple a reasonable opportunity to cure its breach of warranty would
15 have been futile. *See* Exhibit 3. Apple also knew of the Audio Defect and yet chose to conceal it by
16 warranting and continuing to advertise the noise cancelling benefits of the AirPods Pro Gen 1, while
17 failing to comply with Apple's express warranty obligations and misrepresenting and suppressing
18 communication regarding the known sound issues with its AirPods Pro Gen 1, including by, *inter alia*,
19 (a) failing to affirmatively reach out to consumers and notify them of the known defect with their AirPods
20 Pro Gen 1 headphones, while leaving in place form language by which Apple uniformly communicated
21 misrepresentations to consumers regarding their purported rights and responsibilities in connection with
22 any defects they experienced, and which conflicted with Apple's single buried website discussing the
23 sound issues with Apple's AirPods Pro Gen 1; (b) suppressing and misrepresenting information regarding
24 the sound issues including by claiming that it only affected a "small percentage of AirPods Pro," when
25 in reality Apple knew the sound issues reflected a defect inherent in all AirPods Pro Gen 1; (c) providing
26

27 ⁴⁹ Apple's one-year manufacturing warranty is inapplicable to the defect at issue as the defect at issue is
28 inherent in every AirPods Pro Gen 1 earpiece—and does not involve the occasional problem with
materials and workmanship covered by Apple's one-year warranty. *See also supra* ¶¶25-29.

consumers with equally defective AirPods Pro Gen 1 as replacements under its one year warranty and purported Service Program; (d) imposing arbitrary and unreasonable conditions on consumers' ability to obtain refunds or adequate relief for their defective AirPods Pro Gen 1 headphones both through the foregoing conduct, as well as through arbitrary and unreasonable time limitations in its sound Service Program relating to date of manufacture and date of purchase; and (e) refusing to repair, replace, and/or refund Class Members' defective AirPods Pro Gen 1 headphones.

338. As a direct and proximate cause of Apple's breach, Plaintiff and Class Members bought AirPods Pro Gen 1s that they otherwise would not have bought, overpaid for their AirPods Pro Gen 1s, did not receive the benefit of their bargain, and their AirPods Pro Gen 1s suffered a diminution in value. Plaintiff and Class Members have also incurred and will continue to incur costs for replacing their AirPods Pro Gen 1s.

339. Plaintiff and Class Members are entitled to legal and equitable relief against Apple, including damages, consequential damages, specific performance, attorney fees, costs of suit, and other relief as appropriate.

TWELFTH CLAIM FOR RELIEF
BREACH OF IMPLIED WARRANTY UNDER FLORIDA LAW
F.S.A. §§ 672.314-672.315
(In the alternative, by Plaintiff Nykerk on Behalf of the Florida Class)

340. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

341. Apple provided Plaintiff Nykerk and all Florida Class Members with an implied warranty that the AirPods Pro Gen 1 and any parts thereof are merchantable and fit for the ordinary purposes for which they were sold—as listening devices capable of delivering intelligible audio without static or other interference. Apple also impliedly warranted that AirPods Pro Gen 1 were suited for the particular purpose of noise cancelling in ANC and Transparency modes—a new functionality it had specialized and expert knowledge about that Plaintiffs did not have.

342. However, the AirPods Pro Gen 1 are not fit for their ordinary purpose as headphones or for the particular purpose as headphones with noise cancelling functionality because they suffer from an inherent Audio Defect at the time of sale that causes them to malfunction. Specifically, the Audio Defect causes the AirPods Pro Gen 1 to experience “sound issues”—including, crackling or static sounds, loss

1 of bass sound, increase in background sounds, or other sound issues due to the noise cancelling and other
2 sound features not working as expected.

3 343. The Audio Defect, which is present at the point of sale (and remains latent until
4 manifestation), renders the AirPods Pro Gen 1 incapable of functioning as headphones at all—let alone
5 as headphones capable of noise cancelling or transparency modes. As such, the AirPods Pro Gen 1 were
6 not merchantable and not fit for their ordinary purpose as headphones, much less as headphones with
7 noise cancelling functionality.

8 344. Apple impliedly warranted that the AirPods Pro Gen 1 were of merchantable quality and
9 fit for audio use, as well as for use as noise cancelling headphones. This implied warranty included,
10 among other things, a warranty that the AirPods Pro Gen 1 manufactured, supplied, distributed, and/or
11 sold by Apple were reliable and would not experience premature failure or “sound issues” when
12 consumers used them in a reasonable and foreseeable manner.

13 345. Contrary to the applicable implied warranties, the AirPods Pro Gen 1 at the time of sale
14 and thereafter were not fit for their ordinary and intended purpose of providing Plaintiff and Class
15 Members with reliable headphones, much less ones with noise cancelling functionality.

16 346. Apple’s actions, as complained of herein, breached the implied warranty that the
17 headphones were of merchantable quality and fit for such use.

18 347. The AirPods Pro Gen 1 would not pass without objection in the marketplace had Apple
19 made their inherent defect known as they suffer from sound issues, and thus were not of fair average
20 quality within the description, are not fit for the ordinary purpose as headphones, and are not permitted
21 variations of quality.

22 348. Apple had reason to know that Plaintiff Nykerk and similarly situated consumers would
23 rely on the seller’s skill or judgment regarding the sound quality of headphones, and the ability of
24 headphones to perform noise-cancelling functions in particular.

25 349. Any attempt by Apple to disclaim or limit the implied warranty of merchantability vis-à-
26 vis consumers would be unconscionable and unenforceable because Apple knowingly sold a defective
27 product without informing consumers about the defect. Any time limits contained in Apple’s warranty
28 periods would likewise be unconscionable and inadequate to protect Plaintiff and the other Florida Class

Members. Among other things, Plaintiff and the other Florida Class Members had no meaningful choice in determining any time limitations, the terms of which unreasonably favored Apple. A gross disparity in bargaining power existed between Apple and Plaintiff and the other Florida Class Members, and Apple knew of the defect at the time of sale.

350. As a direct and proximate result of Apple's breach of the implied warranty of merchantability, Plaintiff and the other Florida Class Members have been damaged in an amount to be proven at trial, including, but not limited to, benefit-of-the-bargain damages, restitution, and/or diminution of value.

THIRTEENTH CLAIM FOR RELIEF
Florida Deceptive and Unfair Trade Practices ("FDUTPA")
West's F.S.A. §§ 501.201-501.213
(By Plaintiff Nykerk, individually and on behalf of the Florida Class)

351. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

352. Apple sells products and performs services in Florida.

353. Plaintiff and Florida Class Members are "consumers" as defined by F.S.A § 501.203(7).

354. Apple's conduct as described herein was in the conduct of "trade or commerce" as defined by F.S.A. § 501.203(8).

355. As alleged above, Apple made direct and explicit promises and statements to consumers that their AirPods Pro Gen 1 would provide consumers "superior sound quality" that "cuts out the noise" for an "immersive noise-canceling experience," and overall "rich, immersive listening experience." Through active noise cancellation and transparency modes, Apple promised that both modes would block unwanted sound produced internally, externally or both, and would produce "pure, incredibly clear sound." Plaintiff purchased Apple's AirPods Pro Gen 1 because of those representations.

356. Under Florida law, "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." F.S.A. § 501.204(1).

357. Apple engaged in unfair and/or deceptive trade practices in the conduct of their business, in violation of F.S.A. § 501.204(1) by:

- a. knowingly and fraudulently misrepresenting the sound quality and listening experience that the AirPods Pro Gen 1 would provide consumers and the features and characteristics that the AirPods Pro Gen 1 possessed;
- b. knowingly and intentionally selling a defective product;
- c. knowingly and intentionally omitting, suppressing, and concealing the material fact from Plaintiff and Florida Class Members that the AirPods Pro Gen 1 were inherently defective;
- d. knowing that the same Audio Defect present in AirPods Pro Gen 1 manufactured after the cutoff date for the sound issues described on the support page discussing the Service Program;
- e. intentionally choosing not to publicize the sound issues discussed on the support page describing the Service Program; and
- f. intentionally and willfully leading consumers with AirPods Pro Gen 1 manufactured before the cut-off, when, in fact, Apple knowingly provided an equally defective AirPods Pro Gen 1 to the few who qualified; and
- g. intentionally and willfully selecting an arbitrary cutoff date for consumer's eligibility to obtain replacements for their defective AirPods Pro Gen 1 under Apple's Service Program.

358. Apple's misrepresentations and omissions were material because they were likely to deceive reasonable consumers about the quality of the experience its AirPods Pro Gen 1 would provide consumers and whether its products were fit for the ordinary purposes for which they were sold.

359. Indeed, Plaintiff reasonably relied on Apple's representations and decided to purchase Apple AirPods Pro Gen 1 because of the high-quality sound experience Apple promised, including their ability to block unwanted sound produced internally, externally or both, through its ANC and/or transparency modes. Accordingly, Plaintiff was deceived by Apple's misrepresentations and omissions.

360. Apple intended to mislead Plaintiff and Florida Class Members and induce them to rely on its misrepresentations and omissions to purchase AirPods Pro Gen 1.

361. Had Apple disclosed that its AirPods Pro Gen 1 contained an Audio Defect known to cause sound issues, such as crackling, static, interruption and loss of sound, Plaintiff and Florida Class Members would not have purchased or would have paid substantially less for their AirPods Pro Gen 1.

362. The above acts by Apple are “unfair” as they offend public policy, are immoral, unethical, oppressive, unscrupulous, and/or caused substantial injury to Plaintiff and Florida Class Members that they could not reasonably avoid. The injury caused to Plaintiff and Florida Class Members outweighed any benefits to consumers or to competition.

363. Apple acted willfully, intentionally, knowingly, and maliciously to violate FDUTPA, and recklessly disregarded Plaintiff and Florida Class Members’ rights.

364. As a direct and proximate result of Apple’s unfair, unlawful, and deceptive practices, Plaintiff and Florida Class Members suffered injury and/or damages, including, but not limited to the loss of money or property, for having purchased AirPods Pro Gen 1 that they otherwise would not have bought, overpaying for their AirPods Pro Gen 1, and incurring costs for replacing their AirPods Pro Gen 1.

365. Pursuant to F.S.A § 501.211, Plaintiff and Florida Class Members seek all monetary and nonmonetary relief allowed by law, including actual damages, and reasonable attorneys’ fees and costs.

ILLINOIS STATE LAW CLAIMS

FOURTEENTH CLAIM FOR RELIEF **BREACH OF EXPRESS WARRANTY UNDER ILLINOIS LAW** **Ill. Unif. Com. Code § 5/2-313** **(Plaintiff Ambrozic on Behalf of the Illinois Class)**

366. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

367. § 5/2-313 of Illinois’ Uniform Commercial Code provides that:

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.

368. Apple expressly warranted that AirPods Pro Gen 1 provide “superior sound quality” and a noise cancelling feature—including “Active Noise Cancelling” (“ANC”) to filter out exterior sound and “Transparency” modes to filter out interior sound, while ensuring that desired sound could be heard clearly in both noise cancelling and transparency modes. These descriptions and affirmations of fact or promises became part of the basis of the bargain between Apple and all Plaintiffs and Class Members, thereby giving rise to express warranties that the AirPods Pro Gen 1 conformed to the descriptions and affirmations of fact or promises.⁵⁰

369. These descriptions and affirmations of fact or promises made by Apple was made to induce Plaintiff and Class Members to purchase Apple’s AirPods Pro Gen 1.

370. Plaintiff Ambrozic, in making his purchase of AirPods Pro Gen 1, relied on these descriptions, representations, affirmations of fact, or promises outlined above.

371. In fact, however, Apple’s AirPods Pro Gen 1 did not have superior sound quality and did not provide effective noise cancelling. Instead, the AirPods Pro Gen 1 had “sound issues” caused by an inherent defect in all AirPods Pro Gen 1. Instead of eliminating unwanted sound, the Audio Defect actually produced unwanted sound in the form of crackling and static, thereby decreasing the functionality, usability, and value of Plaintiff Ambrozic and other similarly situated purchasers’ headphones.

372. Apple has been notified of the breaches within a reasonable time, and/or Plaintiff was not required to do so because affording Apple a reasonable opportunity to cure its breach of warranty would have been futile. *See* Exhibit 3. Apple also knew of the Audio Defect and yet chose to conceal it by warranting and continuing to advertise the noise cancelling benefits of the AirPods Pro Gen 1, while failing to comply with Apple’s express warranty obligations and misrepresenting and suppressing communication regarding the known sound issues with its AirPods Pro Gen 1, including by, *inter alia*,

⁵⁰ Apple’s one-year manufacturing warranty is inapplicable to the defect at issue as the defect at issue is inherent in every AirPods Pro Gen 1 earpiece—and does not involve the occasional problem with materials and workmanship covered by Apple’s one-year warranty. *See also supra* ¶¶25-29.

(a) failing to affirmatively reach out to consumers and notify them of the known defect with their AirPods Pro Gen 1 headphones, while leaving in place form language by which Apple uniformly communicated misrepresentations to consumers regarding their purported rights and responsibilities in connection with any defects they experienced, and which conflicted with Apple’s single buried website discussing the sound issues with Apple’s AirPods Pro Gen 1; (b) suppressing and misrepresenting information regarding the sound issues including by claiming that it only affected a “small percentage of AirPods Pro,” when in reality Apple knew the sound issues reflected a defect inherent in all AirPods Pro Gen 1; (c) providing consumers with equally defective AirPods Pro Gen 1 as replacements under its one year warranty and purported Service Program; (d) imposing arbitrary and unreasonable conditions on consumers’ ability to obtain refunds or adequate relief for their defective AirPods Pro Gen 1 headphones both through the foregoing conduct, as well as through arbitrary and unreasonable time limitations in its sound Service Program relating to date of manufacture and date of purchase; and (e) refusing to repair, replace, and/or refund Class Members’ defective AirPods Pro Gen 1 headphones.

373. As a direct and proximate cause of Apple’s breach, Plaintiff and Class Members bought AirPods Pro Gen 1s that they otherwise would not have bought, overpaid for their AirPods Pro Gen 1s, did not receive the benefit of their bargain, and their AirPods Pro Gen 1s suffered a diminution in value. Plaintiff and Class Members have also incurred and will continue to incur costs for replacing their AirPods Pro Gen 1s.

374. Plaintiff and Class Members are entitled to legal and equitable relief against Apple, including damages, consequential damages, specific performance, attorney fees, costs of suit, and other relief as appropriate.

FIFTEENTH CLAIM FOR RELIEF
BREACH OF IMPLIED WARRANTY UNDER ILLINOIS LAW
Ill. Unif. Com. Code §§ 5/2-314-5/2-315
(By Plaintiff Ambrozic on Behalf of the Illinois Class)

375. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

376. Apple provided Plaintiff Ambrozic and all Illinois Class Members with an implied warranty that the AirPods Pro Gen 1 and any parts thereof are merchantable and fit for the ordinary purposes for which they were sold—as listening devices capable of delivering intelligible audio without

1 static or other interference. Apple also impliedly warranted that AirPods Pro Gen 1 were suited for the
2 particular purpose of noise cancelling in ANC and Transparency modes—a new functionality it had
3 specialized and expert knowledge about that Plaintiffs did not have.

4 377. However, the AirPods Pro Gen 1 are not fit for their ordinary purpose as headphones
5 because they suffer from an inherent Audio Defect at the time of sale that causes them to malfunction.
6 Specifically, the Audio Defect causes “sound issues” as described herein—including, crackling or static
7 sounds, loss of bass sound, increase in background sounds, or other sound issues due to the noise
8 cancelling and other sound features not working as expected.

9 378. The Audio Defect, which is present at the point of sale (and remains latent until
10 manifestation), renders the AirPods Pro Gen 1 incapable of functioning as headphones at all—let alone
11 as headphones capable of noise cancelling or transparency modes. As such, the AirPods Pro Gen 1 were
12 not merchantable and not fit for their ordinary purpose as headphones.

13 379. Apple impliedly warranted that the AirPods Pro Gen 1 were of merchantable quality and
14 fit for audio use, as well as for use as noise cancelling headphones. This implied warranty included,
15 among other things, a warranty that the AirPods Pro Gen 1 manufactured, supplied, distributed, and/or
16 sold by Apple were reliable and would not experience premature failure or “sound issues” when
17 consumers used them in a reasonable and foreseeable manner.

18 380. Contrary to the applicable implied warranties, the AirPods Pro Gen 1 at the time of sale
19 and thereafter were not fit for their ordinary and intended purpose of providing Plaintiff and Class
20 Members with reliable headphones, much less ones with noise cancelling functionality.

21 381. Apple’s actions, as complained of herein, breached the implied warranty that the
22 headphones were of merchantable quality and fit for the ordinary use for which they were sold.

23 382. The AirPods Pro Gen 1 would not pass without objection in the marketplace had Apple
24 made their inherent defect known as they suffer from sound issues, and thus were not of fair average
25 quality within the description, are not fit for the ordinary purpose as headphones, and are not permitted
26 variations of quality.

383. Apple had reason to know that Plaintiff Ambrozic and similarly situated consumers would rely on the seller's skill or judgment regarding the sound quality of headphones, and the ability of headphones to perform noise-cancelling functions in particular.

384. Any attempt by Apple to disclaim or limit the implied warranty of merchantability vis-à-vis consumers would be unconscionable and unenforceable because Apple knowingly sold a defective product without informing consumers about the defect. Any time limits contained in Apple's warranty periods would likewise be unconscionable and inadequate to protect Plaintiff and the other Illinois Class Members. Among other things, Plaintiff and the other Illinois Class Members had no meaningful choice in determining any time limitations, the terms of which unreasonably favored Apple. A gross disparity in bargaining power existed between Apple and Plaintiff and the other Illinois Class Members, and Apple knew of the defect at the time of sale.

385. As a direct and proximate result of Apple's breach of the implied warranty of merchantability, Plaintiff and the other Illinois Class Members have been damaged in an amount to be proven at trial, including, but not limited to, benefit-of-the-bargain damages, restitution, and/or diminution of value.

SIXTEENTH CLAIM FOR RELIEF

Illinois Consumer Fraud and Deceptive Business Practices ("ICFA")

815 ILCS 505/1, et seq.

(By Plaintiff Ambrozic, individually and on behalf of the Illinois Class)

386. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

387. Apple sells products and performs services in Illinois.

388. Apple is a "person" as defined by 815 Ill. Comp. Stat. §§ 505/1(c).

389. Plaintiff and Illinois Class Members are "consumers" as defined by 815 Ill. Comp. Stat. §§ 505/1(e).

390. Apple's conduct as described herein was in the conduct of "trade" or "commerce" as defined by 815 Ill. Comp. Stat. § 505/1(f).

391. Plaintiff has a private right of action under 815 Ill. Comp. Stat. § 505/10a.

392. As alleged above, Apple made direct and explicit promises and statements to consumers that their AirPods Pro Gen 1 would provide consumers "superior sound quality" that "cuts out the noise"

1 for an “immersive noise-canceling experience,” and overall “rich, immersive listening experience.”
2 Through active noise cancellation and transparency modes, Apple promised that both modes would block
3 unwanted sound produced internally, externally or both, and would produce “pure, incredibly clear
4 sound.” Plaintiff purchased Apple’s AirPods Pro Gen 1 because of those representations.

5 393. The ICFA prohibits “unfair or deceptive acts or practices . . . with intent that others rely
6 upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or
7 commerce[.]” 815 Ill. Comp. Stat. § 505/2.

8 394. Apple engaged in unfair and/or deceptive trade practices in the conduct of their business,
9 in violation of 815 Ill. Comp. Stat. § 505/2, by:

- 10 • knowingly and fraudulently misrepresenting the sound quality and listening experience that
11 the AirPods Pro Gen 1 would provide consumers and the features and characteristics that the
12 AirPods Pro Gen 1 possessed;
- 13 • knowingly and intentionally selling a defective product;
- 14 • knowingly and intentionally omitting, suppressing, and concealing the material fact from
15 Plaintiff and Illinois Class Members that the AirPods Pro Gen 1 were inherently defective.

16 395. The ICFA also prohibits “the use or employment of any practice described in Section 2 of
17 the ‘Uniform Deceptive Trade Practices Act’, approved August 5, 1965, in the conduct of any trade or
18 commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged
19 thereby.” 815 Ill. Comp. Stat. § 505/2.

20 396. Apple engaged in unfair or deceptive acts in the conduct of their business, in violation of
21 815 Ill. Comp. Stat. § 505/2 by use of the following practices prohibited by the Illinois Uniform Deceptive
22 Trade Practices Act, 815 Ill. Comp. Stat. § 510/2(a):
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- 1 • Representing that goods or services have sponsorship, approval, characteristics, ingredients,
2 uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval,
3 status, affiliation, or connection that he or she does not have (§ 510/2(a)(5));
- 4 • Representing that goods or services are of a particular standard, quality, or grade or that goods
5 are a particular style or model, if they are of another (§ 510/2(a)(7));
- 6 • Advertising goods or services with intent not to sell them as advertised (§ 510/2(a)(9));
- 7 • Engaging in any other conduct which similarly creates a likelihood of confusion or
8 misunderstanding (§ 510/2(a)(12)).

9 397. Apple's misrepresentations and omissions were material because they were likely to
10 deceive reasonable consumers about the quality of the experience its AirPods Pro Gen 1 would provide
11 consumers and whether its products were fit for the ordinary purposes for which they were sold.

12 398. Indeed, Plaintiff reasonably relied on Apple's representations and decided to purchase
13 Apple AirPods Pro Gen 1 because of the high-quality sound experience Apple promised, including their
14 ability to block unwanted sound produced internally, externally or both, through its ANC and/or
15 transparency modes. Accordingly, Plaintiff was deceived by Apple's misrepresentations and omissions.

16 399. Apple intended to mislead Plaintiff and Illinois Class Members and induce them to rely
17 on its misrepresentations and omissions to purchase AirPods Pro Gen 1.

18 400. Had Apple disclosed that its AirPods Pro Gen 1 contained an Audio Defect known to
19 cause sound issues, such as crackling, static, interruption and loss of sound, Plaintiff and Illinois Class
20 Members would not have purchased or would have paid substantially less for their AirPods Pro Gen 1.

21 401. The above acts by Apple are "unfair" as they offend public policy, are immoral, unethical,
22 oppressive, or unscrupulous, and/or caused substantial injury to Plaintiff and Illinois Class Members that
23 they could not reasonably avoid. The injuries suffered by Plaintiffs and Illinois Class Members are greatly
24 outweighed by any potential countervailing benefit to consumers or to competition.

25 402. Apple acted intentionally, knowingly, and maliciously to violate ICFA, and recklessly
26 disregarded Plaintiff and Illinois Class Members' rights.

27 403. As a direct and proximate result of Apple's unfair, unlawful, and deceptive practices,
28 Plaintiff and Illinois Class Members suffered injury and/or damages, including, but not limited to the loss
of money or property, for having purchased AirPods Pro Gen 1 that they otherwise would not have

1 bought, overpaying for their AirPods Pro Gen 1, and incurring costs for replacing their AirPods Pro Gen
2 1.

3 404. Pursuant to 815 Ill. Comp. Stat. § 505/10a, Plaintiff and Illinois Class Members seek all
4 monetary and nonmonetary relief allowed by law, including damages, restitution, punitive damages, and
5 reasonable attorneys' fees and costs.

6 ***NEW YORK STATE LAW CLAIMS***

7 **SEVENTEENTH CLAIM FOR RELIEF**
8 **BREACH OF EXPRESS WARRANTY UNDER NEW YORK LAW**
9 **N.Y. Unif. Com. Code § 2-313**
10 **(Plaintiffs Adair and Kadyrov on Behalf of the New York Class)**

11 405. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though
12 fully set forth herein.

13 406. § 2-313 of New York's Uniform Commercial Code provides that:

14 (1) Express warranties by the seller are created as follows:

15 (a) Any affirmation of fact or promise made by the seller to the buyer which relates
16 to the goods and becomes part of the basis of the bargain creates an express
17 warranty that the goods shall conform to the affirmation or promise.

18 (b) Any description of the goods which is made part of the basis of the bargain
19 creates an express warranty that the goods shall conform to the description.

20 (c) Any sample or model which is made part of the basis of the bargain creates an
21 express warranty that the whole of the goods shall conform to the sample or model.

22 (2) It is not necessary to the creation of an express warranty that the seller use formal words
23 such as "warrant" or "guarantee" or that he have a specific intention to make a warranty,
24 but an affirmation merely of the value of the goods or a statement purporting to be merely
25 the seller's opinion or commendation of the goods does not create a warranty.

26 407. Apple expressly warranted that AirPods Pro Gen 1 provide "superior sound quality" and
27 a noise cancelling feature—including "Active Noise Cancelling" ("ANC") to filter out exterior sound
28 and "Transparency" modes to filter out interior sound, while ensuring that desired sound could be heard
clearly in both noise cancelling and transparency modes. These descriptions and affirmations of fact or
promises became part of the basis of the bargain between Apple and all Plaintiffs and Class Members,

1 thereby giving rise to express warranties that the AirPods Pro Gen 1 conformed to the descriptions and
 2 affirmations of fact or promises.⁵¹

3 408. These descriptions and affirmations of fact or promises made by Apple was made to
 4 induce Plaintiffs and Class Members to purchase Apple's AirPods Pro Gen 1.

5 409. Plaintiffs Adair and Kadyrov, in making their respective purchases of AirPods Pro Gen 1,
 6 relied on these descriptions, representations, affirmations of fact, or promises outlined above.

7 410. In fact, however, Apple's AirPods Pro Gen 1 did not have superior sound quality and did
 8 not provide effective noise cancelling. Instead, the AirPods Pro Gen 1 had "sound issues" caused by an
 9 inherent defect in all AirPods Pro Gen 1. Instead of eliminating unwanted sound, the Audio Defect
 10 actually produced unwanted sound in the form of crackling and static, thereby decreasing the
 11 functionality, usability, and value of Plaintiffs Adair and Kadyrov and other similarly situated purchasers'
 12 headphones.

13 411. Apple has been notified of the breaches within a reasonable time, and/or Plaintiffs were
 14 not required to do so because affording Apple a reasonable opportunity to cure its breach of warranty
 15 would have been futile. *See* Exhibit 3. Apple also knew of the Audio Defect and yet chose to conceal it
 16 by warranting and continuing to advertise the noise cancelling benefits of the AirPods Pro Gen 1, while
 17 failing to comply with Apple's express warranty obligations and misrepresenting and suppressing
 18 communication regarding the known sound issues with its AirPods Pro Gen 1, including by, *inter alia*,
 19 (a) failing to affirmatively reach out to consumers and notify them of the known defect with their AirPods
 20 Pro Gen 1 headphones, while leaving in place form language by which Apple uniformly communicated
 21 misrepresentations to consumers regarding their purported rights and responsibilities in connection with
 22 any defects they experienced, and which conflicted with Apple's single buried website discussing the
 23 sound issues with Apple's AirPods Pro Gen 1; (b) suppressing and misrepresenting information regarding
 24 the sound issues including by claiming that it only affected a "small percentage of AirPods Pro," when
 25 in reality Apple knew the sound issues reflected a defect inherent in all AirPods Pro Gen 1; (c) providing
 26

27
 28 ⁵¹ Apple's one-year manufacturing warranty is inapplicable to the defect at issue as the defect at issue is
 inherent in every AirPods Pro Gen 1 earpiece—and does not involve the occasional problem with
 materials and workmanship covered by Apple's one-year warranty. *See also supra* ¶¶25-29.

consumers with equally defective AirPods Pro Gen 1 as replacements under its one year warranty and purported Service Program; (d) imposing arbitrary and unreasonable conditions on consumers' ability to obtain refunds or adequate relief for their defective AirPods Pro Gen 1 headphones both through the foregoing conduct, as well as through arbitrary and unreasonable time limitations in its sound Service Program relating to date of manufacture and date of purchase; and (e) refusing to repair, replace, and/or refund Class Members' defective AirPods Pro Gen 1 headphones.

412. As a direct and proximate cause of Apple's breach, Plaintiffs and Class Members bought AirPods Pro Gen 1s that they otherwise would not have bought, overpaid for their AirPods Pro Gen 1s, did not receive the benefit of their bargain, and their AirPods Pro Gen 1s suffered a diminution in value. Plaintiffs and Class Members have also incurred and will continue to incur costs for replacing their AirPods Pro Gen 1s.

413. Plaintiffs and Class Members are entitled to legal and equitable relief against Apple, including damages, consequential damages, specific performance, attorney fees, costs of suit, and other relief as appropriate.

EIGHTEENTH CLAIM FOR RELIEF
BREACH OF IMPLIED WARRANTY UNDER NEW YORK LAW
N.Y. Unif. Com. Code §§ 2-314-2-315
(In the alternative, by Plaintiffs Adair and Kadyrov on Behalf of the New York Class)

414. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

415. Apple provided Plaintiffs Adair and Kadyrov and all New York Class Members with an implied warranty that the AirPods Pro Gen 1 and any parts thereof are merchantable and fit for the ordinary purposes for which they were sold—as listening devices capable of delivering intelligible audio without static or other interference. Apple also impliedly warranted that AirPods Pro Gen 1 were suited for the particular purpose of noise cancelling in ANC and Transparency modes—a new functionality it had specialized and expert knowledge about that Plaintiffs did not have..

416. However, the AirPods Pro Gen 1 are not fit for their ordinary purpose as headphones because they suffer from an inherent Audio Defect that causes “sound issues” as described herein—

1 including, crackling or static sounds, loss of bass sound, increase in background sounds, or other sound
2 issues due to the noise cancelling and other sound features not working as expected.

3 417. As such, the AirPods Pro Gen 1 were not merchantable and not fit for their ordinary
4 purpose as headphones, much less as headphones with noise cancelling functionality.

5 418. Apple impliedly warranted that the AirPods Pro Gen 1 were of merchantable quality and
6 fit for audio use, as well as for use as noise cancelling headphones. This implied warranty included,
7 among other things, a warranty that the AirPods Pro Gen 1 manufactured, supplied, distributed, and/or
8 sold by Apple were reliable and would not experience premature failure or “sound issues” when
9 consumers used them in a reasonable and foreseeable manner.

10 419. Contrary to the applicable implied warranties, the AirPods Pro Gen 1 at the time of sale
11 and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and Class
12 Members with reliable headphones, much less ones with noise cancelling functionality.

13 420. Apple’s actions, as complained of herein, breached the implied warranty that the
14 headphones were of merchantable quality and fit for such use.

15 421. The AirPods Pro Gen 1 would not pass without objection in the marketplace had Apple
16 made their inherent defect known as they suffer from sound issues, and thus were not of fair average
17 quality within the description, are not fit for the ordinary purpose as headphones, and are not permitted
18 variations of quality.

19 422. Apple had reason to know that Plaintiffs Adair and Kadyrov and similarly situated
20 consumers would rely on the seller’s skill or judgment regarding the sound quality of headphones, and
21 the ability of headphones to perform noise-cancelling functions in particular.

22 423. Any attempt by Apple to disclaim or limit the implied warranty of merchantability vis-à-
23 vis consumers would be unconscionable and unenforceable because Apple knowingly sold a defective
24 product without informing consumers about the defect. Any time limits contained in Apple’s warranty
25 periods would likewise be unconscionable and inadequate to protect Plaintiffs and the other New York
26 Class Members. Among other things, Plaintiffs and the other New York Class Members had no
27 meaningful choice in determining any time limitations, the terms of which unreasonably favored Apple.
28

1 A gross disparity in bargaining power existed between Apple and Plaintiffs and the other New York Class
2 Members, and Apple knew of the defect at the time of sale.

3 424. As a direct and proximate result of Apple's breach of the implied warranty of
4 merchantability, Plaintiffs and the other New York Class Members have been damaged in an amount to
5 be proven at trial, including, but not limited to, benefit-of-the-bargain damages, restitution, and/or
6 diminution of value.

7 **NINETEENTH CLAIM FOR RELIEF**
8 **New York Deceptive Trade Practices Act ("GBL")**
9 **N.Y. Gen. Bus. Law § 349**

10 **(By Plaintiffs Adair and Kadyrov, on behalf of themselves and the New York Class)**

11 425. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though
12 fully set forth herein.

13 426. Apple conducts business, trade, or commerce in New York as required by N.Y. GBL §
14 349(a).

15 427. Apple engaged in deceptive acts or practices in the conduct of its business, trade, and
16 commerce or furnishing of services, in violation of N.Y. Gen. Bus. Law § 349, including:

- 17 • knowingly and fraudulently misrepresenting the sound quality and listening experience that
18 the AirPods Pro Gen 1 would provide consumers and the features and characteristics that the
19 AirPods Pro Gen 1 possessed;
- 20 • knowingly and intentionally selling a defective product;
- 21 • knowingly and intentionally omitting, suppressing, and concealing the material fact from
22 Plaintiff and New York Class Members that the AirPods Pro Gen 1 were inherently defective.

23 428. Apple's misrepresentations and omissions were material because they were likely to
24 deceive reasonable consumers about the quality of the experience its AirPods Pro Gen 1 would provide
25 consumers and whether its products were fit for the ordinary purposes for which they were sold.

26 429. Indeed, Plaintiffs and New York Class Members reasonably relied on Apple's
27 representations and decided to purchase Apple AirPods Pro Gen 1 because of the high-quality sound
28 experience Apple promised, including their ability to block unwanted sound produced internally,
externally or both, through its ANC and/or transparency modes. Accordingly, Plaintiffs and New York
Class Members were deceived by Apple's misrepresentations and omissions.

1 430. Apple acted intentionally, knowingly, and maliciously to violate New York’s GBL, and
2 recklessly disregarded Plaintiffs and New York Class Members’ rights.

3 431. As a direct and proximate result of Apple’s unfair, unlawful, and deceptive practices,
4 Plaintiffs and New York Class Members suffered injury and/or damages, including, but not limited to the
5 loss of money or property, for having purchased AirPods Pro Gen 1 that they otherwise would not have
6 bought, overpaying for their AirPods Pro Gen 1, and incurring costs for replacing their AirPods Pro Gen
7 1.

8 432. Apple’s deceptive and unlawful acts and practices complained of herein affected the
9 public interest and consumers at large, including the many New Yorkers that purchased Apple’s defective
10 AirPods Pro Gen 1.

11 433. The above deceptive and unlawful practices and acts by Apple caused substantial injury
12 to Plaintiffs and New York Class Members that they could not reasonably avoid.

13 434. Plaintiffs and New York Class members seek all monetary and non-monetary relief
14 allowed by law, including actual damages or statutory damages of \$50 (whichever is greater), treble
15 damages, and attorneys’ fees and costs.

OHIO STATE LAW CLAIMS**TWENTIETH CLAIM FOR RELIEF**
BREACH OF EXPRESS WARRANTY UNDER OHIO LAW**Ohio Revised Code § 1302.26****(In the alternative, by Plaintiff Rodgers on Behalf of the Ohio Class)**

435. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

§ 1302.26 of the Ohio Revised Code provides that:

(A) Express warranties by the seller are created as follows:

(1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(B) It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.

436. Apple expressly warranted that AirPods Pro Gen 1 provide “superior sound quality” and a noise cancelling feature—including “Active Noise Cancelling” (“ANC”) to filter out exterior sound and “Transparency” modes to filter out interior sound, while ensuring that desired sound could be heard clearly in both noise cancelling and transparency modes. These descriptions and affirmations of fact or promises became part of the basis of the bargain between Apple and all Plaintiffs and Class Members, thereby giving rise to express warranties that the AirPods Pro Gen 1 conformed to the descriptions and affirmations of fact or promises.

437. These descriptions and affirmations of fact or promises made by Apple was made to induce Plaintiff and Class Members to purchase Apple’s AirPods Pro Gen 1.

438. Plaintiff Rodgers, in making her purchase of AirPods Pro Gen 1, relied on these descriptions, representations, affirmations of fact, or promises outlined above.

439. In fact, however, Apple’s AirPods Pro Gen 1 did not have superior sound quality and did not provide effective noise cancelling. Instead, the AirPods Pro Gen 1 had “sound issues” caused by an

1 inherent defect in all AirPods Pro Gen 1. Instead of eliminating unwanted sound, the Audio Defect
2 actually produced unwanted sound in the form of crackling and static, thereby decreasing the
3 functionality, usability, and value of Plaintiff Rodgers' and other similarly situated purchasers'
4 headphones.

5 440. Apple has been notified of the breaches within a reasonable time, and/or Plaintiff was not
6 required to do so because affording Apple a reasonable opportunity to cure its breach of warranty would
7 have been futile. *See* Exhibit 3. Apple also knew of the Audio Defect and yet chose to conceal it by
8 warranting and continuing to advertise the noise cancelling benefits of the AirPods Pro Gen 1, while
9 failing to comply with Apple's express warranty obligations and misrepresenting and suppressing
10 communication regarding the known sound issues with its AirPods Pro Gen 1, including by, *inter alia*,
11 (a) failing to affirmatively reach out to consumers and notify them of the known defect with their AirPods
12 Pro Gen 1 headphones, while leaving in place form language by which Apple uniformly communicated
13 misrepresentations to consumers regarding their purported rights and responsibilities in connection with
14 any defects they experienced, and which conflicted with Apple's single buried website discussing the
15 sound issues with Apple's AirPods Pro Gen 1; (b) suppressing and misrepresenting information regarding
16 the sound issues including by claiming that it only affected a "small percentage of AirPods Pro," when
17 in reality Apple knew the sound issues reflected a defect inherent in all AirPods Pro Gen 1; (c) providing
18 consumers with equally defective AirPods Pro Gen 1 as replacements under its one year warranty and
19 purported Service Program; (d) imposing arbitrary and unreasonable conditions on consumers' ability to
20 obtain refunds or adequate relief for their defective AirPods Pro Gen 1 headphones both through the
21 foregoing conduct, as well as through arbitrary and unreasonable time limitations in its sound Service
22 Program relating to date of manufacture and date of purchase; and (e) refusing to repair, replace, and/or
23 refund Class Members' defective AirPods Pro Gen 1 headphones.

24 441. As a direct and proximate cause of Apple's breach, Plaintiff and Class Members bought
25 AirPods Pro Gen 1s that they otherwise would not have bought, overpaid for their AirPods Pro Gen 1s,
26 did not receive the benefit of their bargain, and their AirPods Pro Gen 1s suffered a diminution in value.
27 Plaintiff and Class Members have also incurred and will continue to incur costs for replacing their
28 AirPods Pro Gen 1s.

1 442. Plaintiff and Class Members are entitled to legal and equitable relief against Apple,
 2 including damages, consequential damages, specific performance, attorney fees, costs of suit, and other
 3 relief as appropriate.

4 **TWENTY-FIRST CLAIM FOR RELIEF**
BREACH OF IMPLIED WARRANTY UNDER OHIO LAW
Ohio Revised Code §§ 1302.27-1302.28
 5 **(In the alternative, by Plaintiff Rodgers on Behalf of the Ohio Class)**

6 443. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though
 7 fully set forth herein.

8 444. Apple provided Plaintiff Rodgers and the Ohio Class Members with an implied warranty
 9 that the AirPods Pro and any parts thereof are merchantable and fit for the ordinary purposes for which
 10 they were sold—as listening devices capable of delivering intelligible audio without static or other
 11 interference. Apple also impliedly warranted that AirPods Pro Gen 1 were suited for the particular
 12 purpose of noise cancelling in ANC and Transparency modes—a new functionality it had specialized and
 13 expert knowledge about that Plaintiffs did not have.

14 445. However, the AirPods Pro are not fit for their ordinary purpose as headphones or as
 15 headphones with noise cancelling functionality because they suffer from an inherent Audio Defect at the
 16 time of sale that causes them to malfunction. Specifically, the Audio Defect causes the AirPods Pro Gen
 17 1 to experience “sound issues” as described herein—including, crackling or static sounds, loss of bass
 18 sound, increase in background sounds, or other sound issues due to the noise cancelling and other sound
 19 features not working as expected.

20 446. The Audio Defect, which is present at the point of sale (and remains latent until
 21 manifestation), renders the AirPods Pro Gen 1 incapable of functioning as headphones at all—let alone
 22 as headphones capable of noise cancelling or transparency modes. As such, the AirPods Pro were
 23 incapable of being used as headphones, much less as headphones with noise cancelling functionality.

24 447. Apple impliedly warranted that the AirPods Pro were of merchantable quality and fit for
 25 audio use, as well as for use as noise cancelling headphones. This implied warranty included, among
 26 other things, a warranty that the AirPods Pro manufactured, supplied, distributed, and/or sold by Apple
 27 were reliable and would not experience premature failure or “sound issues” when consumers used them
 28 in a reasonable and foreseeable manner.

448. Contrary to the applicable implied warranties, the AirPods Pro at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiff Rodgers and the Ohio Class Members with reliable headphones, much less ones with noise cancelling functionality.

449. Apple's actions, as complained of herein, breached the implied warranty that the AirPods Pro were of merchantable quality and fit for such use.

450. The AirPods Pro Gen 1 would not pass without objection in the marketplace had Apple made their inherent defect known as they suffer from sound issues, and thus were not of fair average quality within the description, are not fit for the ordinary purpose as headphones, and are not permitted variations of quality.

451. Apple had reason to know that Plaintiff and similarly situated consumers would rely on its skill or judgment regarding the sound quality of headphones, and the ability of headphones to perform noise-cancelling functions in particular.

452. Any attempt by Apple to disclaim or limit the implied warranty of merchantability vis-à-vis consumers would be unconscionable and unenforceable because Apple knowingly sold a defective product without informing consumers about the defect. Any time limits contained in Apple's warranty periods would likewise be unconscionable and inadequate to protect Plaintiff and the other Ohio Class Members. Among other things, Plaintiff and the other Ohio Class Members had no meaningful choice in determining any time limitations, the terms of which unreasonably favored Apple. A gross disparity in bargaining power existed between Apple and Plaintiff and the other Ohio Class Members, and Apple knew of the defect at the time of sale.

453. As a direct and proximate result of Apple's breach of the implied warranty of merchantability, Plaintiff and the other Ohio Class Members have been damaged in an amount to be proven at trial, including, but not limited to, benefit-of-the-bargain damages, restitution, and/or diminution of value.

TWENTY-SECOND CLAIM FOR RELIEF
Ohio Consumer Sales Practices Act ("OCSPA")
O.R.C. § 1345 et seq.

(By Plaintiff Rodgers, individually and on behalf of the Ohio Class)

454. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

455. This count is brought pursuant to Ohio’s Consumer Sales Practices Act (“OCSPA”), Ohio Revised Code § 1345, *et seq.* At all relevant times hereto, including at all times during the transaction between Plaintiff and Apple, and the consumer transactions between the putative class members and Apple, Plaintiff and each of the putative class members were “consumers” as defined in the OCSPA, and the transactions were “consumer transactions” as defined in the OCSPA. Ohio Rev. Code § 1345.01.

456. At all relevant times hereto, Apple was a “supplier” as defined in the OCSPA.

457. In connection with a consumer transaction (i.e., advertising, offering, and/or selling sold goods or services in the form of the AirPods Pro Gen 1) in Ohio, Apple acted as a supplier and committed unfair, deceptive, and/or unconscionable acts directly or indirectly affecting the people of Ohio.

458. As alleged above, Apple made direct and explicit promises and statements to consumers that their AirPods Pro Gen 1 would provide consumers “superior sound quality” that “cuts out the noise” for an “immersive noise-canceling experience,” and overall “rich, immersive listening experience.” Through active noise cancellation and transparency modes, Apple promised that both modes would block unwanted sound produced internally, externally or both, and would produce “pure, incredibly clear sound.” Plaintiff purchased Apple’s AirPods Pro Gen 1 because of those representations.

459. Apple continued to promote and advertise its AirPods Pro Gen 1 as providing, *inter alia*, “superior sound quality,” while knowing that its AirPods Pro Gen 1 contained an Audio Defect that caused static and cracking sounds and a poor-quality sound experience.

460. Specifically, while operating in Ohio, Apple violated Ohio Rev. Code §1345.01(A) by engaging in deceptive trade practices, including, but not limited to the following:

- knowingly and fraudulently misrepresenting the sound quality and listening experience that the AirPods Pro Gen 1 would provide consumers and the features and characteristics that the AirPods Pro Gen 1 possessed;
- knowingly and intentionally selling a defective product;
- knowingly and intentionally omitting, suppressing, and concealing the material fact from Plaintiff and Ohio Class Members that the AirPods Pro Gen 1 were inherently defective.

461. The OCSPA permits a class action if Apple violated a “rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based.” O.R.C. 1345.09.

1 462. Apple violated the following rule: “[i]t shall be a deceptive act or practice in connection
2 with a consumer transaction for a supplier to ... Make any representations, claims, or assertions of fact,
3 whether orally or in writing, which would cause a reasonable consumer to believe such statements are
4 true, unless, at the time such representations, claims, or assertions are made, the supplier possesses or
5 relies upon a reasonable basis in fact such as factual, objective, quantifiable, clinical or scientific data or
6 other competent and reliable evidence which substantiates such representations, claims, or assertions of
7 fact[.]” O.A.C. 109:4-3-02.

8 463. Apple’s misrepresentations and omissions were material because they were likely to
9 deceive ordinary consumers about the quality of the experience its AirPods Pro Gen 1 would provide
10 consumers and whether its products were fit for the ordinary purposes for which they were sold.

11 464. Indeed, Plaintiff was deceived by Apple’s representations and omissions. Plaintiff
12 purchased Apple AirPods Pro Gen 1 because of the high-quality sound experience Apple promised and
13 the ability to block unwanted sound produced internally, externally or both, through its ANC and/or
14 transparency modes.

15 465. Apple intended to mislead Plaintiff and Ohio Class Members and induce them to rely on
16 its misrepresentations and omissions to purchase AirPods Pro Gen 1.

17 466. Had Apple disclosed that its AirPods Pro Gen 1 contained an Audio Defect known to
18 cause sound issues, such as crackling, static, interruption and loss of sound, Plaintiff and Ohio Class
19 Members would not have purchased or would have paid substantially less for their AirPods Pro Gen 1.

20 467. The above unfair and deceptive acts and practices by Apple were immoral, unethical,
21 oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and the Ohio Class
22 Members that they could not reasonably avoid; this substantial injury outweighed any benefits to
23 consumers or to competition.

24 468. Apple acted intentionally, willfully, knowingly, and maliciously to violate the OCSA,
25 and recklessly disregarded Plaintiff and Ohio Class Members’ rights.

26 469. As a direct and proximate result of Apple’s practices, Plaintiff and the Ohio Class
27 Members suffered injury and/or damages, including, but not limited to the loss of money or property, for
28

1 having purchased AirPods Pro Gen 1 that they otherwise would not have bought, overpaying for their
2 AirPods Pro Gen 1, and incurring costs for replacing their AirPods Pro Gen 1.

3 470. The injuries suffered by Plaintiffs and Ohio Class Members are greatly outweighed by
4 any potential countervailing benefit to consumers or to competition, nor are they injuries that Plaintiff
5 and Ohio Class Members should have reasonably avoided.

6 471. Pursuant to the OCSPA, Plaintiff and Ohio Class Members seek all monetary and non-
7 monetary relief allowed by law, including actual damages, attorneys' fees, and any other relief that is just
8 and proper.

9 ***PENNSYLVANIA STATE LAW CLAIMS***
10 **TWENTY-THIRD CLAIM FOR RELIEF**
11 **BREACH OF EXPRESS WARRANTY UNDER PENNSYLVANIA LAW**
12 **13 Pa.C.S.A. § 2313**
13 **(By Plaintiff LaBella on Behalf of the Pennsylvania Class)**

14 472. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though
15 fully set forth herein.

16 § 2313 of Pennsylvania Commercial Code provides that:

17 (a) General rule.--Express warranties by the seller are created as follows:

18 (1) Any affirmation of fact or promise made by the seller to the buyer which relates
19 to the goods and becomes part of the basis of the bargain creates an express
20 warranty that the goods shall conform to the affirmation or promise.

21 (2) Any description of the goods which is made part of the basis of the bargain
22 creates an express warranty that the goods shall conform to the description.

23 (3) Any sample or model which is made part of the basis of the bargain creates an
24 express warranty that the whole of the goods shall conform to the sample or model.

25 (b) Formal words or specific intent unnecessary.--It is not necessary to the creation of an
26 express warranty that the seller use formal words such as "warrant" or "guarantee" or that
27 he have a specific intention to make a warranty, but an affirmation merely of the value of
28 the goods or a statement purporting to be merely the opinion of the seller or commendation
of the goods does not create a warranty.

473. Apple expressly warranted that AirPods Pro Gen 1 provide "superior sound quality" and
a noise cancelling feature—including "Active Noise Cancelling" ("ANC") to filter out exterior sound
and "Transparency" modes to filter out interior sound, while ensuring that desired sound could be heard
clearly in both noise cancelling and transparency modes. These descriptions and affirmations of fact or
promises became part of the basis of the bargain between Apple and all Plaintiffs and Class Members,

1 thereby giving rise to express warranties that the AirPods Pro Gen 1 conformed to the descriptions and
 2 affirmations of fact or promises.⁵²

3 474. These descriptions and affirmations of fact or promises made by Apple was made to
 4 induce Plaintiff and Class Members to purchase Apple's AirPods Pro Gen 1.

5 475. Plaintiff LaBella, in making her purchase of AirPods Pro Gen 1, relied on these
 6 descriptions, representations, affirmations of fact, or promises outlined above.

7 476. In fact, however, Apple's AirPods Pro Gen 1 did not have superior sound quality and did
 8 not provide effective noise cancelling. Instead, the AirPods Pro Gen 1 had "sound issues" caused by an
 9 inherent defect in all AirPods Pro Gen 1. Instead of eliminating unwanted sound, the Audio Defect
 10 actually produced unwanted sound in the form of crackling and static, thereby decreasing the
 11 functionality, usability, and value of Plaintiff LaBella and other similarly situated purchasers'
 12 headphones.

13 477. Apple has been notified of the breaches within a reasonable time, and/or Plaintiff was not
 14 required to do so because affording Apple a reasonable opportunity to cure its breach of warranty would
 15 have been futile. *See* Exhibit 3. Apple also knew of the Audio Defect and yet chose to conceal it by
 16 warranting and continuing to advertise the noise cancelling benefits of the AirPods Pro Gen 1, while
 17 failing to comply with Apple's express warranty obligations and misrepresenting and suppressing
 18 communication regarding the known sound issues with its AirPods Pro Gen 1, including by, *inter alia*,
 19 (a) failing to affirmatively reach out to consumers and notify them of the known defect with their AirPods
 20 Pro Gen 1 headphones, while leaving in place form language by which Apple uniformly communicated
 21 misrepresentations to consumers regarding their purported rights and responsibilities in connection with
 22 any defects they experienced, and which conflicted with Apple's single buried website discussing the
 23 sound issues with Apple's AirPods Pro Gen 1; (b) suppressing and misrepresenting information regarding
 24 the sound issues including by claiming that it only affected a "small percentage of AirPods Pro," when
 25 in reality Apple knew the sound issues reflected a defect inherent in all AirPods Pro Gen 1; (c) providing
 26

27
 28 ⁵² Apple's one-year manufacturing warranty is inapplicable to the defect at issue as the defect at issue is
 inherent in every AirPods Pro Gen 1 earpiece—and does not involve the occasional problem with
 materials and workmanship covered by Apple's one-year warranty. *See also supra* ¶¶25-29.

consumers with equally defective AirPods Pro Gen 1 as replacements under its one year warranty and purported Service Program; (d) imposing arbitrary and unreasonable conditions on consumers' ability to obtain refunds or adequate relief for their defective AirPods Pro Gen 1 headphones both through the foregoing conduct, as well as through arbitrary and unreasonable time limitations in its sound Service Program relating to date of manufacture and date of purchase; and (e) refusing to repair, replace, and/or refund Class Members' defective AirPods Pro Gen 1 headphones.

478. As a direct and proximate cause of Apple's breach, Plaintiff and Class Members bought AirPods Pro Gen 1s that they otherwise would not have bought, overpaid for their AirPods Pro Gen 1s, did not receive the benefit of their bargain, and their AirPods Pro Gen 1s suffered a diminution in value. Plaintiff and Class Members have also incurred and will continue to incur costs for replacing their AirPods Pro Gen 1s.

479. Plaintiff and Class Members are entitled to legal and equitable relief against Apple, including damages, consequential damages, specific performance, attorney fees, costs of suit, and other relief as appropriate.

TWENTY-FOURTH CLAIM FOR RELIEF
BREACH OF IMPLIED WARRANTY UNDER PENNSYLVANIA LAW
13 Pa.C.S.A. §§ 2314-2315
(In the alternative, by Plaintiff LaBella on Behalf of the Pennsylvania Class)

480. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

481. Apple provided Plaintiff LaBella and the Pennsylvania Class Members with an implied warranty that the AirPods Pro and any parts thereof are merchantable and fit for the ordinary purposes for which they were sold—as listening devices capable of delivering intelligible audio without static or other interference. Apple also impliedly warranted that AirPods Pro Gen 1 were suited for the particular purpose of noise cancelling in ANC and Transparency modes—a new functionality it had specialized and expert knowledge about that Plaintiffs did not have.

482. However, the AirPods Pro Gen 1 are not fit for their ordinary purpose as headphones because they suffer from an inherent Audio Defect at the time of sale that causes them to malfunction. Specifically, the Audio Defect causes “sound issues” as described herein—including, crackling or static

1 sounds, loss of bass sound, increase in background sounds, or other sound issues due to the noise
2 cancelling and other sound features not working as expected.

3 483. The Audio Defect, which is present at the point of sale (and remains latent until
4 manifestation), renders the AirPods Pro Gen 1 incapable of functioning as headphones at all—let alone
5 as headphones capable of noise cancelling or transparency modes. As such, the AirPods Pro Gen 1 were
6 not merchantable and not fit for their ordinary purpose as headphones, much less as headphones with
7 noise cancelling functionality.

8 484. Apple impliedly warranted that the AirPods Pro Gen 1 were of merchantable quality and
9 fit for audio use, as well as for use as noise cancelling headphones. This implied warranty included,
10 among other things, a warranty that the AirPods Pro Gen 1 manufactured, supplied, distributed, and/or
11 sold by Apple were reliable and would not experience premature failure or “sound issues” when
12 consumers used them in a reasonable and foreseeable manner.

13 485. Contrary to the applicable implied warranties, the AirPods Pro Gen 1 at the time of sale
14 and thereafter were not fit for their ordinary and intended purpose of providing Plaintiff and Class
15 Members with reliable headphones, much less ones with noise cancelling functionality.

16 486. Apple’s actions, as complained of herein, breached the implied warranty that the
17 headphones were of merchantable quality and fit for the ordinary use for which they were sold.

18 487. The AirPods Pro Gen 1 would not pass without objection in the marketplace had Apple
19 made their inherent defect known as they suffer from sound issues, and thus were not of fair average
20 quality within the description, are not fit for the ordinary purpose as headphones, and are not permitted
21 variations of quality.

22 488. Apple had reason to know that Plaintiff LaBella and similarly situated consumers would
23 rely on the seller’s skill or judgment regarding the sound quality of headphones, and the ability of
24 headphones to perform noise-cancelling functions in particular.

25 489. Any attempt by Apple to disclaim or limit the implied warranty of merchantability vis-à-
26 vis consumers would be unconscionable and unenforceable because Apple knowingly sold a defective
27 product without informing consumers about the defect. Any time limits contained in Apple’s warranty
28 periods would likewise be unconscionable and inadequate to protect Plaintiff and the other Pennsylvania

Class Members. Among other things, Plaintiff and the other Pennsylvania Class Members had no meaningful choice in determining any time limitations, the terms of which unreasonably favored Apple. A gross disparity in bargaining power existed between Apple and Plaintiff and the other Pennsylvania Class Members, and Apple knew of the defect at the time of sale.

490. As a direct and proximate result of Apple's breach of the implied warranty of merchantability, Plaintiff and the other Pennsylvania Class Members have been damaged in an amount to be proven at trial, including, but not limited to, benefit-of-the-bargain damages, restitution, and/or diminution of value.

TWENTY-FIFTH CLAIM FOR RELIEF

Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTCPL")

73 Pa. Cons. Stat. Ann. §§ 201-1–201-9.3

(By Plaintiff LaBella, individually and on behalf of the Pennsylvania Class)

491. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

492. Apple sells products and performs services in the Commonwealth of Pennsylvania.

493. Plaintiff, Pennsylvania Class Members, and Apple are "persons" as defined by the UTCPL. 73 P.S. § 201-2(2).

494. Apple's products and services constitute as "trade" and "commerce" under the statute. 73 P.S. § 201-2(3).

495. Plaintiff purchased Apple's AirPods Pro Gen 1 primarily for personal, family, and/or household purposes as required by 73 P.S. § 201-9.2(a).

496. Plaintiff has a private right of action under 73 P.S. § 201-9.2(a).

497. As alleged above, Apple made direct and explicit promises and statements to consumers that their AirPods Pro Gen 1 would provide consumers "superior sound quality" that "cuts out the noise" for an "immersive noise-canceling experience," and overall "rich, immersive listening experience." Through active noise cancellation and transparency modes, Apple promised that both modes would block unwanted sound produced internally, externally or both, and would produce "pure, incredibly clear sound." Plaintiff purchased Apple's AirPods Pro Gen 1 because of those representations.

498. Apple continued to promote and advertise its AirPods Pro Gen 1 as providing, *inter alia*, “superior sound quality,” while knowing that its AirPods Pro Gen 1 contained an Audio Defect that caused static and cracking sounds and a poor-quality sound experience.

499. The UTPCPL lists twenty-one instances of “unfair methods of competition” and “unfair or deceptive acts or practices.” 73 P.S. § 201-2(4). Apple violated the UTPCPL by engaging in, *inter alia*, the following:

- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have (73 P.S. § 201-2(4)(v));
- Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another (73 P.S. § 201-2(4)(vii));
- Advertising goods or services with intent not to sell them as advertised (73 P.S. § 201-2(4)(ix)); and
- Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding (73 P.S. § 201-2(4)(xxi)).

500. While operating in Pennsylvania, engaged in unfair methods of competition and unfair and/or deceptive trade practices in connection with a consumer transaction, in violation of 73 P.S. §§ 201-1, *et seq.*, including, but not limited to the following:

- knowingly and fraudulently misrepresenting the sound quality and listening experience that the AirPods Pro Gen 1 would provide consumers and the features and characteristics that the AirPods Pro Gen 1 possessed;
- knowingly and intentionally selling a defective product;
- knowingly and intentionally omitting, suppressing, and concealing the material fact from Plaintiff and Pennsylvania Class Members that the AirPods Pro Gen 1 were inherently defective
- knowing that the same Audio Defect present in AirPods Pro Gen 1 manufactured after the cutoff date for the sound issues described on the support page discussing the Service Program;

- 1 • intentionally choosing not to publicize the sound issues discussed on the support page
- 2 describing the Service Program; and
- 3 • intentionally and willfully leading consumers with AirPods Pro Gen 1 manufactured before
- 4 the cut-off, when, in fact, Apple knowingly provided an equally defective AirPods Pro Gen
- 5 1 to the few who qualified; and
- 6 • intentionally and willfully selecting an arbitrary cutoff date for consumer's eligibility to
- 7 obtain replacements for their defective AirPods Pro Gen 1 under Apple's Service Program.

8 501. Apple's misrepresentations and omissions were material because they were likely to
9 deceive ordinary consumers about the quality of the experience its AirPods Pro Gen 1 would provide
10 consumers and whether its products were fit for the ordinary purposes for which they were sold.

11 502. Indeed, Plaintiff was deceived by Apple's representations and omissions. Plaintiff
12 purchased Apple AirPods Pro Gen 1 because of the high-quality sound experience Apple promised and
13 the ability to block unwanted sound produced internally, externally or both, through its ANC and/or
14 transparency modes.

15 503. Apple intended to mislead Plaintiff and Pennsylvania Class Members and induce them to
16 rely on its misrepresentations and omissions to purchase AirPods Pro Gen 1.

17 504. Had Apple disclosed that its AirPods Pro Gen 1 contained an Audio Defect known to
18 cause sound issues, such as crackling, static, interruption and loss of sound, Plaintiff and Pennsylvania
19 Class Members would not have purchased or would have paid substantially less for their AirPods Pro
20 Gen 1.

21 505. Apple acted intentionally, knowingly, and maliciously to violate Pennsylvania's Unfair
22 Trade Practices and Consumer Protection Law, and recklessly disregarded Plaintiff and Pennsylvania
23 Class Members' rights.

24 506. As a direct and proximate result of Apple's practices, Plaintiff and the Pennsylvania Class
25 Members suffered injury and/or damages, including, but not limited to the loss of money or property, for
26 having purchased AirPods Pro Gen 1 that they otherwise would not have bought, overpaying for their
27 AirPods Pro Gen 1, and incurring costs for replacing their AirPods Pro Gen 1.

507. The injuries suffered by Plaintiffs and Class Members are greatly outweighed by any potential countervailing benefit to consumers or to competition, nor are they injuries that Plaintiff and Pennsylvania Class Members should have reasonably avoided.

508. Pursuant to 73 Pa. Stat. Ann. § 201-9.2, Plaintiff and Pennsylvania Class Members seek all monetary and non-monetary relief allowed by law, including actual damages or statutory damages of \$100 (whichever is greater), treble damages, attorneys' fees and costs, and any additional relief the Court deems necessary or proper.

TEXAS STATE LAW CLAIMS

TWENTY-SIXTH CLAIM FOR RELIEF
BREACH OF EXPRESS WARRANTY UNDER TEXAS LAW

Tex. Bus. & Com. Code § 2.313

(In the alternative, by Plaintiff Pawson on Behalf of the Texas Class)

509. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

510. § 2.313 of the Texas Business and Commercial Code provides that:

(a) Express warranties by the seller are created as follows:

(1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

511. Apple expressly warranted that AirPods Pro Gen 1 provide "superior sound quality" and a noise cancelling feature—including "Active Noise Cancelling" ("ANC") to filter out exterior sound and "Transparency" modes to filter out interior sound, while ensuring that desired sound could be heard clearly in both noise cancelling and transparency modes. These descriptions and affirmations of fact or promises became part of the basis of the bargain between Apple and all Plaintiffs and Class Members,

1 thereby giving rise to express warranties that the AirPods Pro Gen 1 conformed to these descriptions and
2 affirmations of fact or promises.⁵³

3 512. These descriptions and affirmations of fact or promises made by Apple was made to
4 induce Plaintiff and Class Members to purchase Apple's AirPods Pro Gen 1.

5 513. Plaintiff Pawson, in making his purchase of AirPods Pro Gen 1, relied on these
6 descriptions, representations, affirmations of fact, or promises outlined above.

7 514. In fact, however, Apple's AirPods Pro Gen 1 did not have superior sound quality and did
8 not provide effective noise cancelling. Instead, the AirPods Pro Gen 1 had "sound issues" caused by an
9 inherent defect in all AirPods Pro Gen 1. Instead of eliminating unwanted sound, the Audio Defect
10 actually produced unwanted sound in the form of crackling and static, thereby decreasing the
11 functionality, usability, and value of Plaintiff Pawson and other similarly situated purchasers'
12 headphones.

13 515. Apple has been notified of the breaches within a reasonable time, and/or Plaintiff was not
14 required to do so because affording Apple a reasonable opportunity to cure its breach of warranty would
15 have been futile. *See* Exhibit 3. Apple also knew of the Audio Defect and yet chose to conceal it by
16 warranting and continuing to advertise the noise cancelling benefits of the AirPods Pro Gen 1, while
17 failing to comply with Apple's express warranty obligations and misrepresenting and suppressing
18 communication regarding the known sound issues with its AirPods Pro Gen 1, including by, *inter alia*,
19 (a) failing to affirmatively reach out to consumers and notify them of the known defect with their AirPods
20 Pro Gen 1 headphones, while leaving in place form language by which Apple uniformly communicated
21 misrepresentations to consumers regarding their purported rights and responsibilities in connection with
22 any defects they experienced, and which conflicted with Apple's single buried website discussing the
23 sound issues with Apple's AirPods Pro Gen 1; (b) suppressing and misrepresenting information regarding
24 the sound issues including by claiming that it only affected a "small percentage of AirPods Pro," when
25 in reality Apple knew the sound issues reflected a defect inherent in all AirPods Pro Gen 1; (c) providing
26

27 ⁵³ Apple's one-year manufacturing warranty is inapplicable to the defect at issue as the defect at issue is
28 inherent in every AirPods Pro Gen 1 earpiece—and does not involve the occasional problem with
materials and workmanship covered by Apple's one-year warranty. *See also supra* ¶¶ 25-29.

consumers with equally defective AirPods Pro Gen 1 as replacements under its one year warranty and purported Service Program; (d) imposing arbitrary and unreasonable conditions on consumers' ability to obtain refunds or adequate relief for their defective AirPods Pro Gen 1 headphones both through the foregoing conduct, as well as through arbitrary and unreasonable time limitations in its sound Service Program relating to date of manufacture and date of purchase; and (e) refusing to repair, replace, and/or refund Class Members' defective AirPods Pro Gen 1 headphones.

516. As a direct and proximate cause of Apple's breach, Plaintiff and Class Members bought AirPods Pro Gen 1s that they otherwise would not have bought, overpaid for their AirPods Pro Gen 1s, did not receive the benefit of their bargain, and their AirPods Pro Gen 1s suffered a diminution in value. Plaintiff and Class Members have also incurred and will continue to incur costs for replacing their AirPods Pro Gen 1s.

517. Plaintiff and Class Members are entitled to legal and equitable relief against Apple, including damages, consequential damages, specific performance, attorney fees, costs of suit, and other relief as appropriate.

TWENTY-SEVENTH CLAIM FOR RELIEF
BREACH OF IMPLIED WARRANTY UNDER TEXAS LAW
Tex. Bus. & Com. Code §§ 2.314-2.315
(In the alternative, by Plaintiff Pawson on Behalf of the Texas Class)

518. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

519. Apple was at all relevant times a "seller" and "merchant" of headphones within the meaning of Tex. Bus. & Com. Code § 2.103 and § 2.104, respectively.

520. Apple's AirPods Pro Gen 1 are and were at all relevant times "goods" pursuant to Tex. Bus. & Com. Code § 2.105.

521. A warranty that Apple's AirPods Pro Gen 1 and any parts thereof were in merchantable condition and fit for the ordinary purpose for which they were sold—as listening devices capable of delivering intelligible audio without static or other interference—is implied by law pursuant to Tex. Bus. & Com. Code §§ 2.314-2.315.

522. Apple thus impliedly warranted that the AirPods Pro Gen 1 were of merchantable quality and fit for the ordinary purposes for which they were sold—as listening devices capable of delivering

1 intelligible audio without static or other interference. Apple also impliedly warranted that AirPods Pro
2 Gen 1 were suited for the particular purpose of noise cancelling in ANC and Transparency modes—a
3 new functionality it had specialized and expert knowledge about that Plaintiffs did not have. Apple’s
4 implied warranty included, among other things, a warranty that the AirPods Pro Gen 1 manufactured,
5 supplied, distributed, and/or sold by Apple were reliable and would not experience premature failure or
6 “sound issues” when consumers used them in a reasonable and foreseeable manner.

7 523. However, the AirPods Pro Gen 1 are not fit for their ordinary purpose as headphones
8 because they suffer from an inherent Audio Defect that causes “sound issues” as described herein—
9 including, crackling or static sounds, loss of bass sound, increase in background sounds, or other sound
10 issues due to the noise cancelling and other sound features not working as expected. As such, contrary to
11 the applicable implied warranties, the AirPods Pro Gen 1 were not merchantable or fit for their ordinary
12 and intended purpose of providing Plaintiff and Class Members with reliable headphones.

13 524. The Audio Defect, which is present at the point of sale (and remains latent until
14 manifestation), renders the AirPods Pro Gen 1 incapable of functioning as headphones at all—let alone
15 as headphones capable of noise cancelling or transparency modes. As such, the AirPods Pro Gen 1 were
16 not merchantable and not fit for their ordinary purpose as headphones, much less as headphones with
17 noise cancelling functionality.

18 525. Apple impliedly warranted that the AirPods Pro Gen 1 were of merchantable quality and
19 fit for audio use, as well as for use as noise cancelling headphones. This implied warranty included,
20 among other things, a warranty that the AirPods Pro Gen 1 manufactured, supplied, distributed, and/or
21 sold by Apple were reliable and would not experience premature failure or “sound issues” when
22 consumers used them in a reasonable and foreseeable manner.

23 526. Contrary to the applicable implied warranties, the AirPods Pro Gen 1 at the time of sale
24 and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and Class
25 Members with reliable headphones, much less ones with noise cancelling functionality.

26 527. Apple’s actions, as complained of herein, breached the implied warranty that the
27 headphones were of merchantable quality and fit for the ordinary use for which they were sold.
28

1 528. The AirPods Pro Gen 1 would not pass without objection in the marketplace had Apple
2 made their inherent defect known as they suffer from sound issues, and thus were not of fair average
3 quality within the description, are not fit for the ordinary purpose as headphones, and are not permitted
4 variations of quality.

5 529. Apple had reason to know that Plaintiff Pawson and similarly situated consumers would
6 rely on the seller's skill or judgment regarding the sound quality of headphones, and the ability of
7 headphones to perform noise-cancelling functions in particular.

8 530. Apple has been notified of its breaches of warranty and Apple has thus been afforded a
9 reasonable opportunity to cure the breach, but Apple has not remedied the breach. *See* Exhibit 3.

10 531. Any attempt by Apple to disclaim or limit the implied warranty of merchantability vis-à-
11 vis consumers would be unconscionable and unenforceable because Apple knowingly sold a defective
12 product without informing consumers about the defect. Any time limits contained in Apple's warranty
13 periods would likewise be unconscionable and inadequate to protect Plaintiff and the other Texas Class
14 Members. Among other things, Plaintiff and the other Texas Class Members had no meaningful choice
15 in determining any time limitations, the terms of which unreasonably favored Apple. A gross disparity
16 in bargaining power existed between Apple and Plaintiff and the other Texas Class members, and Apple
17 knew of the defect at the time of sale.

18 532. As a direct and proximate result of Apple's breach of the implied warranty of
19 merchantability, Plaintiff and the other Texas Class Members have been damaged in an amount to be
20 proven at trial, including, but not limited to, benefit-of-the-bargain damages, restitution, and/or
21 diminution of value.

22
23 **TWENTY-EIGHTH CLAIM FOR RELIEF**
24 **Deceptive Trade Practices-Consumer Protection Act**

25 **Texas Bus. & Com. Code § 17.41, *et seq.***

26 **(By Plaintiff Pawson, individually and on behalf of the Texas Class)**

27 533. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though
28 fully set forth herein.

 534. Apple is a "person," as defined by Tex. Bus. & Com. Code § 17.45(3).

535. Plaintiff and the Texas Subclass Members are “consumers,” as defined by Tex. Bus. & Com. Code § 17.45(4).

536. Apple advertised, offered, or sold goods or services in Texas and engaged in trade or commerce directly or indirectly affecting the people of Texas, as defined by Tex. Bus. & Com. Code § 17.45(1), (3), and (6).

537. The DTPA provides consumers with a private right of action against a “person” for “use or employment . . . [of] false, misleading, or deceptive act or practice . . . breach of an express or implied warranty[,] [and] any unconscionable action or course of action” Tex. Bus. & Com. Code § 17.50(a)(1)-(3).

538. As alleged above, Apple made direct and explicit promises and statements to consumers that their AirPods Pro Gen 1 would provide consumers “superior sound quality” that “cuts out the noise” for an “immersive noise-canceling experience,” and overall “rich, immersive listening experience.” Through active noise cancellation and transparency modes, Apple promised that both modes would block unwanted sound produced internally, externally or both, and would produce “pure, incredibly clear sound.” Plaintiff purchased Apple’s AirPods Pro Gen 1 because of those representations.

539. Apple continued to promote and advertise its AirPods Pro Gen 1 as providing, *inter alia*, “superior sound quality,” while knowing that its AirPods Pro Gen 1 contained an Audio Defect that caused static and cracking sounds and a poor-quality sound experience.

540. Apple engaged in false, misleading, or deceptive acts and practices, in violation of Tex. Bus. & Com. Code § 17.46(b), including:

- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not § 17.46(b)(5);
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another § 17.46(b)(7);
- Advertising goods or services with intent not to sell them as advertised § 17.46(b)(9);
- Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the

1 consumer into a transaction into which the consumer would not have entered had the
2 information been disclosed § 17.46(b)(24).

3 541. While operating in Texas, engaged in false, misleading, or deceptive acts or practices in
4 connection with a consumer transaction, in violation of Texas Bus. & Com. Code § 17.41, *et seq.*,
5 including, but not limited to the following:

- 6 • knowingly and fraudulently misrepresenting the sound quality and listening experience that
7 the AirPods Pro Gen 1 would provide consumers and the features and characteristics that the
8 AirPods Pro Gen 1 possessed;
- 9 • knowingly and intentionally selling a defective product; knowingly and intentionally omitting,
10 suppressing, and concealing the material fact from Plaintiff and Texas Class Members that
11 the AirPods Pro Gen 1 were inherently defective.
- 12 • knowing that the same Audio Defect present in AirPods Pro Gen 1 manufactured after the
13 cutoff date for the sound issues described on the support page discussing the Service Program;
- 14 • intentionally choosing not to publicize the sound issues discussed on the support page
15 describing the Service Program; and
- 16 • intentionally and willfully leading consumers with AirPods Pro Gen 1 manufactured before
17 the cut-off, when, in fact, Apple knowingly provided an equally defective AirPods Pro Gen 1
18 to the few who qualified; and
- 19 • intentionally and willfully selecting an arbitrary cutoff date for consumer's eligibility to obtain
20 replacements for their defective AirPods Pro Gen 1 under Apple's Service Program.

21 542. Apple's misrepresentations and omissions were material because they were likely to
22 deceive reasonable consumers about the quality of the experience its AirPods Pro Gen 1 would provide
23 consumers and whether its products were fit for the ordinary purposes for which they were sold.

24 543. Indeed, Plaintiff was deceived by Apple's representations and omissions. Plaintiff
25 purchased Apple AirPods Pro Gen 1 because of the high-quality sound experience Apple promised and
26 the ability to block unwanted sound produced internally, externally or both, through its ANC and/or
27 transparency modes.
28

1 544. Apple intended to mislead Plaintiff and Texas Class Members and induce them to rely on
2 its misrepresentations and omissions to purchase AirPods Pro Gen 1.

3 545. Apple acted intentionally, knowingly, and maliciously to violate Texas's DTPA and
4 recklessly disregarded Plaintiff and Texas Class Members' rights.

5 546. Apple's acts and/or practices alleged above constitute "unconscionable actions" under
6 Texas Bus. & Com. Code § 17.45(5) because "to the consumers' determinant, [Apple took] advantage of
7 the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree."

8 547. Consumers, including Plaintiff and Texas Subclass Members, lacked knowledge about the
9 Audio Defect in Apple's AirPods Pro Gen 1 because this information was known exclusively by Apple.
10 Consumers also lacked the ability, experience, or capacity to detect the defect. Plaintiff and the Texas
11 Class lack expertise in audio engineering. Apple took advantage of its unparalleled brand reputation for
12 high quality products and Plaintiff's and the Texas Class's inability, inexperience, or incapacity to detect
13 the Audio Defect.

14 548. Apple intended to take advantage of consumers' lack of knowledge, ability, experience,
15 or capacity to a grossly unfair degree, with reckless disregard of the unfairness that would result. The
16 unfairness that resulted from Apple's conduct is glaringly noticeable and flagrant.

17 549. Had Apple disclosed that its AirPods Pro Gen 1 contained an Audio Defect known to
18 cause sound issues, such as crackling, static, interruption and loss of sound, Plaintiff and Texas Class
19 Members would not have purchased or would have paid substantially less for their AirPods Pro Gen 1.

20 550. Apple had a duty to disclose to consumers the above facts because Apple knew of the
21 Audio Defect after extensive pre-release testing of the product.

22 551. Apple's duty to disclose arose from its:

- 23 • Possession of exclusive knowledge regarding the quality and characteristics of its AirPods Pro
24 Gen 1;
- 25 • Active concealment of the Audio Defect known to Apple at the time of Plaintiff and Texas
26 Class Members' consumer transactions;

1 552. Incomplete representations about the quality and characteristics of its AirPods Pro Gen 1
2 and purposeful withholding of material facts from Plaintiff and Texas Class Members that contradicted
3 the representations it made about its product.

4 553. Apple also violated the DTPA when it breached its express and/or implied warranties with
5 Plaintiff and the Texas Class Members, as alleged herein. Texas Bus. & Com. Code § 17.50(a)(2).

6 554. As a direct and proximate result of Apple's acts and practices, Plaintiff and the Texas
7 Class Members suffered injury and/or damages, including, but not limited to the loss of money or
8 property, for having purchased AirPods Pro Gen 1 that they otherwise would not have bought, overpaying
9 for their AirPods Pro Gen 1, and incurring costs for replacing their AirPods Pro Gen 1.

10 555. The injuries suffered by Plaintiffs and Class Members are greatly outweighed by any
11 potential countervailing benefit to consumers or to competition, nor are they injuries that Plaintiff and
12 Texas Class Members should have reasonably avoided.

13 556. Pursuant to Tex. Bus. & Com. Code § 17.505, Plaintiff provided Apple written notice of
14 the factual bases of this cause of action and others on October 31, 2024. To date, Apple has taken no
15 action to remedy its misconduct or otherwise address the violations outlined in the written notice sent by
16 Plaintiff's counsel.

17 557. Contemporaneous with the filing of this Amended Complaint, Plaintiff's counsel will send
18 to the Consumer Protection Division a copy of the written notice sent to Apple.

19 558. Plaintiff and the Texas Class Members seek all monetary and non-monetary relief allowed
20 by law, including economic damages; treble damages for each act committed intentionally or knowingly;
21 court costs; reasonably and necessary attorneys' fees; and any other relief which the court deems proper.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request that this Court:

1. Determine that the claims alleged herein may be maintained as a class action under Federal Rule of Civil Procedure 23, and issue an order certifying one or more Classes as defined above;

2. Appoint all Plaintiffs as representatives of the Nationwide Class. In the alternative, appoint Plaintiffs as representatives of multi-state classes with similar laws, or appoint Plaintiffs Philip Camacho and Marc Schaefer as representatives of the California Class, appoint Plaintiff Jeffrey Nykerk as a representative of the Florida Class, appoint Plaintiff David Ambrozic as a representative of the Illinois Class, appoint Plaintiffs Jerry Mitchell Adair and Daniel Kadyrov as representatives of the New York Class, appoint Plaintiff Stacey Rodgers as representative of the Ohio Class, appoint Plaintiff Lindsey LaBella as representative of the Pennsylvania Class, and appoint Plaintiff Michael Pawson as representative of the Texas Class.

3. Appoint all Plaintiffs' counsel whose appearance is noticed herein as Class Counsel;

4. Award all actual, general, special, incidental, statutory, punitive, exemplary, and consequential damages and, in the alternative to damages, any restitution to which Plaintiffs and Class Members are entitled in an amount to be determined at trial and require Apple to disgorge its ill-gotten gains;

5. Award pre-judgment and post-judgment interest on such monetary relief at the highest legal rate to the extent provided by law;

6. Grant appropriate injunctive and/or declaratory relief, including, without limitation, an order that requires Apple to repair, recall, and/or replace the AirPods Pro and to extend the applicable warranties to a reasonable period of time, or, at a minimum, to provide Plaintiffs and Class Members with appropriate curative notice regarding the existence and cause of the Audio Defect;

7. Award reasonable attorneys' fees and costs to the extent provided by law; and

8. Grant such further relief that this Court deems appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

DATED: February 6, 2025

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